

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	Criminal Action
v.)	No. 09-10017-GAO
)	
TAREK MEHANNA,)	
)	
Defendant.)	
)	

BEFORE THE HONORABLE GEORGE A. O'TOOLE, JR.
UNITED STATES DISTRICT JUDGE

DAY TWENTY-ONE
JURY TRIAL

John J. Moakley United States Courthouse
Courtroom No. 9
One Courthouse Way
Boston, Massachusetts 02210
Wednesday, November 23, 2011
9:15 a.m.

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One Courthouse Way, Room 3510
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I N D E X

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
<u>WITNESSES FOR THE GOVERNMENT:</u>				

DANIEL SPAULDING (Cont'd)

By Mr. Auerhahn			48
By Mr. Carney		15	

DANIEL GENCK

By Mr. Auerhahn		81
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E X H I B I T S

<u>DEFENDANT'S</u>	<u>DESCRIPTION</u>	<u>FOR ID</u>	<u>IN EVD.</u>
1123-1127 and 1133-1134	Photographs of NYC trip		23
1144	Posting re Theo van Gogh		34
1143-1146	Chats		65

1 (The following proceedings were held in open court
2 before the Honorable George A. O'Toole, Jr., United States
3 District Judge, United States District Court, District of
4 Massachusetts, at the John J. Moakley United States Courthouse,
5 One Courthouse Way, Boston, Massachusetts, on November 23,
6 2011.

7 The defendant, Tarek Mehanna, is present with counsel.
8 Assistant U.S. Attorneys Aloke Chakravarty and Jeffrey Auerhahn
9 are present, along with Jeffrey D. Groharing, Trial Attorney,
00:20 10 U.S. Department of Justice, National Security Division.)

11 THE COURT: Good morning. I guess the suggestion is
12 that we address the question of Exhibit 58, which the
13 government filed a paper on yesterday, before we resume the
14 testimony. I don't think this pertains to Mr. Spaulding's
15 testimony. He's present in the courtroom. I don't think that
16 matters to anybody. Okay.

17 MR. CARNEY: Well, it would be better if he went
18 outside, please.

19 THE COURT: Okay. Mr. Krupp.

00:21 20 Well, I guess it's the government's motion, so we'll
21 start there.

22 MR. CHAKRAVARTY: Your Honor, previously we had --
23 with -- after reading -- or intending after reading --
24 intending to read one chat, we intended to publish Exhibit 58,
25 58A, which is this video which the defense had filed a motion

1 in limine regarding. As we explained in the papers, the
2 version of the video that would be shown to the jury has been
3 significantly redacted. It would be the first forty seconds of
4 a four-and-a-half -- four minutes, thirty-nine seconds, long
5 video. That forty seconds, if your Honor hasn't seen it
6 recently, is purely some banners that come across the screen
7 and then Osama bin Laden giving -- with a voiceover.

8 THE COURT: It ends with that?

9 MR. CHAKRAVARTY: It ends with the voiceover.

00:22 10 THE COURT: Slide 5, I think, in your papers.

11 MR. CHAKRAVARTY: That's correct, in terms of the
12 translation.

13 THE COURT: I looked at it yesterday afternoon.

14 MR. CHAKRAVARTY: After that ends, the rest of the
15 video, as your Honor knows, depicts these horrible scenes of
16 the mutilated American servicemen. Over -- the voiceover
17 during that portion of the video, which the video is not going
18 to be shown, neither the audio, not to the jury. It's in
19 Arabic. But that part has also been translated. The
00:22 20 government would intend to read that portion --

21 THE COURT: That's the Zarqawi speech?

22 MR. CHAKRAVARTY: That's the Zarqawi speech. There's
23 also an image of Zarqawi on that as that occurs. Again, that's
24 not going to be shown to the jury. Rather, it would be --
25 fortunately, the audio clarifies who the people are. So the

1 translation really does provide the best evidence to the jury
2 without the inflammatory content.

3 While the probative nature is significant just by
4 virtue of the video itself, your Honor, as we point out by the
5 five chats that we -- one of which I included in the
6 attachments, the others which you have available on the
7 system -- this was a central and important piece of media which
8 the defendant disseminated. He lauded it. He made clear that
9 he was in line with the objectives of that video, something
00:23 10 that he took glee in.

11 It's seldom the case that a piece of media to which
12 the defendant ties himself so directly to can be so insightful
13 into what his state of mind is, especially in this case where
14 the defense has repeatedly made the arguments that the
15 defendant was merely a religious scholar, and he didn't have
16 any intentions to participate in fighting, and he certainly
17 didn't believe in the horrible kind of terrorist acts which are
18 alleged in the Indictment and which are depicted in this video.

19 This video is not only contravening the defense's
00:24 20 theory, but it's very probative of the elements of the offense
21 in this case both because of the conspiracy to kill -- these
22 are U.S. soldiers. The defendant is advocating this response
23 to U.S. soldiers in Iraq -- but also because of the al Qa'ida
24 and the terrorist nexus. It's not just a random killing. This
25 is a killing which is being sanctioned by Osama bin Laden and

1 Abu Musab al-Zarqawi, the people who the defendant was reverent
2 of, and this explains why he was reverent of it. It wasn't
3 just because he considered these people mythical figures within
4 Islam. It's because of the actions they were doing to repel
5 the invaders from Iraq.

6 So we think those statements of the defendant, his
7 encouraging others to watch it, his sanctioning of the behavior
8 that was in it, is all highly probative; and the unfair
9 prejudicial value, if there was any, is completely muted by the
00:24 10 fact of how we're presenting the evidence.

11 MS. BASSIL: Yes, your Honor. I'd like to address
12 this. I really think we have finally, I would suggest, tipped
13 the balance on prejudicial over probative and cumulative. To
14 date, we have seen 16 videos. We have had two oral
15 descriptions of beheadings. We have seen one video of someone
16 with a bomb. We have seen three clips of Diverse Operations in
17 Iraq. We have seen two photographs of the front of a video
18 cassette entitled, "Martyrs of Bosnia." We have seen, I think,
19 two to three pictures of Osama bin Laden, the same of Zarqawi,
00:25 20 and a picture of Zawahiri. We've seen two clips of planes
21 crashing into the World Trade Center; three photographs of
22 wounded American soldiers; three photographs of flags, American
23 flags, draped over caskets; and a photo of a United States
24 soldier crying. We've seen endless photos of mujahideens with
25 guns and rocket-propelled grenade launchers.

1 What I want to say -- and in addition to the 16 videos
2 we've seen, they plan on showing another five. So a total of
3 21 videos. And what I would suggest is this, your Honor:
4 There is a case exactly on point. It's United States vs.
5 Al-Moayad, 545 F.3d 139, Second Circuit New York, in which a
6 case was actually reversed on this issue. It was a case in
7 which the defendant was charged similarly with providing
8 material support, conspiracy to provide material support.

9 The prosecution, claiming they needed to show not only
00:26 10 his state of mind -- he had raised an entrapment defense -- but
11 his sort of propensity and state of mind to commit such a
12 crime, insisted on showing a videotape of a wedding in which
13 the wedding speaker -- the defendant was at the wedding -- the
14 wedding speaker talked about the success of Hamas in Tel Aviv
15 that day. In fact, there had been a terrible bus bombing in
16 Tel Aviv that day. They also called someone to describe the
17 bus bombing.

18 They said that although this rarely happens, rarely,
19 it was reversible error. They said that the events -- there
00:27 20 could be little doubt that in the wake of the events of
21 September 11th evidence linking a defendant to terrorism in a
22 trial in which he is not charged with terrorism is likely to
23 cause undue prejudice. And in that case, like this one, where
24 they're charged with a conspiracy to provide material support
25 but not with actual violent acts, not with actually bombing

1 somebody or killing somebody, the highly-charged, inflammatory
2 nature of this kind of evidence and the extensive nature of
3 other similar evidence finally tipped the balance into
4 prejudicial. And I believe that that is where we are here.

5 In addition, the government, as I have seen throughout
6 this case, not willing to say something once, will say it five
7 times. So they have five instant messages in which the
8 defendant, regrettably, crudely refers to this video as "Texas
9 Barbecue." I'm sure you've seen that phrase.

00:28 10 And so not only do I think that nothing should come in
11 with respect to this video, I think we've seen enough videos.
12 And the government says this is so insightful to his state of
13 mind. We have had over 200 readings only because of his "state
14 of mind." If the jury doesn't know what they think his state
15 of mind is by now, they should go home. Yes, we have our own
16 view of his state of mind. That's why a jury decides this.
17 But I would say to the Court they have proven whatever they
18 want to prove. It's going to be up to the jury now how they
19 see it.

00:28 20 I think we finally have tipped the balance here. It's
21 cumulative. It's a waste of time. It's a waste of resources.
22 And it is finally something that is overtly prejudicial and
23 inflammatory, and I would request that the Court exclude it.

24 THE COURT: Okay. I think it can be admitted and as
25 proposed. With respect to the case that -- from the Second

1 Circuit, which I have not looked at, but just hearing it,
2 sounds like it's substantially different in that there was no
3 terrorism charge in that case.

4 But in any event, these issues, both at the admission
5 stage and at the review stage, are highly specific as to the
6 particular circumstances of any given case. And appellate
7 authority is somewhat, but not overwhelmingly, useful. You
8 have to make a call in the individual case. I think the
9 proffer is of very probative evidence, and the question is not,
00:29 10 of course, prejudice but unfair prejudice. And I don't think
11 that exists.

12 Now, I had indicated otherwise previously. I've
13 reviewed the transcript of that exchange, and it appears to me
14 -- and this is consistent with my memory -- that I was focused
15 at the time on whether the evidence was sufficiently probative
16 of the fact of conspiracy. There had been some talk about
17 other exhibits and tying people into the conspiracy.

18 I think that focus was too narrow, and thinking about
19 it more broadly, I think that was -- the indication I gave then
00:30 20 that it should be excluded was not correct. And so I've
21 changed my view with respect to the evidence.

22 I will say that the redaction of the exhibit has gone
23 a great distance to minimizing unfair prejudice. A description
24 of the contents, as opposed to a display of the contents, is
25 significantly less inflammatory, it seems to me. But I think

1 the government is entitled to the evidence.

2 MS. BASSIL: Your Honor, I would ask, however, that if
3 the Court is going to allow it in that if Evan Kohlmann is
4 going to testify concerning this video that he be limited to
5 what has been presented to the jury.

6 THE COURT: Well, okay. I think it's too early to
7 make that ruling, but we'll deal with that as it arises. That
8 may be appropriate. I can't say for sure at this point.

9 As long as you mention Evan Kohlmann, there was some
00:31 10 talk the other day -- I think it was in our off-the-record
11 conference about schedule and so on -- about the parties
12 getting together on his testimony. Has that happened yet?

13 MR. CARNEY: We're scheduled to do it after we recess
14 today, your Honor.

15 THE COURT: Okay. Because we're getting to the point
16 where there are some -- there is a motion directed to that from
17 the defense. There are a couple of other motions that may
18 become more urgent with respect to quashing subpoenas and so on
19 for next week. My thought was we might, Monday afternoon, next
00:32 20 Monday, deal with whatever miscellaneous issues of that sort
21 that need to be addressed.

22 MR. CHAKRAVARTY: I just want to highlight one of
23 those, your Honor, which pertains to scheduling Monday. Kareem
24 Abuzahra is one of the witnesses, depending on how far we get
25 today, might be on Monday. That motion to quash, which was

1 filed by his counsel, we would ask, if you can, to rule on it
2 -- they've asked for a hearing, and we would obviously be
3 supportive of the motion to quash.

4 THE COURT: Maybe we should set that for hearing at 9
5 on Monday.

6 MR. CHAKRAVARTY: Okay. It involves getting a lot of
7 financial records, which means that if the witness is present,
8 he may not be able to gather --

9 THE COURT: Have you been in contact with his counsel?

00:32 10 MR. CHAKRAVARTY: We did originally when we
11 provided --

12 THE COURT: Do you know his availability today, for
13 example?

14 MR. CHAKRAVARTY: I was waiting to hear, but I can
15 inquire into that during the trial day.

16 THE COURT: Mr. Bailey, I believe.

17 MR. CHAKRAVARTY: Mr. Bailey, correct.

18 THE COURT: If he's available, then we could hear him
19 today.

00:33 20 MR. CARNEY: My suggestion is that the witness bring
21 the records with him that are being sought so that if your
22 Honor does not quash the subpoena, he will be prepared to go
23 forward immediately.

24 THE COURT: Let's see if we can resolve it today,
25 perhaps. I guess I would prefer, if Mr. Bailey is available,

1 that he be here at 1, and we can deal with it immediately after
2 the trial day.

3 MR. CARNEY: May I bring one other scheduling matter
4 to your Honor's attention? As you know, the defense is
5 intending to present several expert witnesses. Virtually -- or
6 no. All of these witnesses, except one, are academics, meaning
7 that their day job is normally teaching in classes at Yale or
8 Duke or wherever they might be.

9 They can commit to coming in for one day, but doing
00:33 10 day to day is an extreme hardship. What we're hoping we can do
11 is ask the Court to consider that we'll start at 9:00 with an
12 expert, and if it's necessary to go into the afternoon a short
13 amount of time to finish the cross-examination that we would be
14 able to do that. And then the next day, start with the next
15 expert at 9 because we're just not getting people able to
16 commit to consecutive days being here in the court.

17 THE COURT: I don't know how practical that will be.
18 We have matters scheduled most afternoons. That's something --
19 I completely agree with the goal of getting people in and out
00:34 20 in one day. But without knowing how extensive the testimony
21 is, at what point it goes from direct to cross, what the
22 afternoon schedule is, it's -- we'll get -- I'll have to be
23 pretty specific about those judgments.

24 Let me just say -- I was going to bring this up maybe
25 next week rather than this week but since we're at the end of

1 this week, I guess, I think I had indicated earlier that I had
2 a meeting -- a Judicial Conference Committee meeting that I had
3 hoped to go. It's clear I'm not going to be able to go to it.
4 A consequence of that the three days I had planned for that has
5 nothing scheduled. So we do have afternoons available on those
6 three days. I wanted -- I don't think I want to spoil their
7 holiday with bringing it up to the jurors before they go, but I
8 will want to suggest to them that those days we might -- not
9 only for the reason you raised but just for making more
00:35 10 progress in the case, we might do full days, that is, do a
11 two-hour session on those three days, which would be December
12 7th, 8th, and 9th. I expect it will be your case at that
13 stage.

14 MR. CARNEY: Yes. That might work great because --

15 THE COURT: Maybe that would solve your experts'
16 problem.

17 MR. CARNEY: It might, your Honor, because we weren't
18 thinking about this in terms of next week but, rather, the
19 following week.

00:36 20 THE COURT: And that would be that week, so --

21 MR. CARNEY: Right. Thank you.

22 THE COURT: All right. Let's get the jury.

23 (The jury entered the room at 9:32 a.m.)

24 THE COURT: Good morning, jurors. Thank you for your
25 patience. We had some things to discuss. We've finished. Now

1 we're ready to continue with Mr. Spaulding's testimony. Mr.
2 Carney.

3 MR. CARNEY: Yes, sir, your Honor. Thank you.

4 May I proceed, please?

5 THE COURT: Please.

6 CONTINUED CROSS-EXAMINATION BY MR. CARNEY:

7 Q. Good morning, Mr. Spaulding.

8 A. Good morning, Mr. Carney.

9 Q. Yesterday we ended when I asked you about Tarek's request
00:38 10 to find books concerning the American Revolution period; do you
11 recall that?

12 A. I believe so, yes, sir.

13 Q. Today I'd like to return to some other areas that you
14 talked about in your direct examination. The prosecutor
15 brought out that you downloaded some material that would allow
16 you to encrypt statements or postings that you made so that it
17 would not indicate your IP address, is that right?

18 A. That is correct, sir.

19 Q. And I think the program involved was called TOR?

00:39 20 A. I believe so, yes.

21 Q. And you did download that and put it on your computer for
22 a while, didn't you?

23 A. I did, sir.

24 Q. It made your computer slow down a bit, didn't it?

25 A. It does, yes.

1 Q. And, ultimately, you removed it from your computer?

2 A. Yes. I ceased to use it, yeah.

3 Q. And the reason that you took it off your computer is
4 because you thought that the things you were saying, the
5 postings and the chats, were protected by the First Amendment,
6 didn't you?

7 MR. AUERHAHN: Object.

8 THE COURT: Sustained.

9 Q. When you met with the FBI, you told them that by -- you
00:39 10 weren't afraid by taking down the encryption because you felt
11 you had not done anything illegal and that anything you said
12 would be protected by the First Amendment; isn't that a fact?

13 MR. AUERHAHN: Objection.

14 THE COURT: Sustained.

15 Q. Your state of mind was you were doing nothing wrong by
16 putting these comments of yours on the web, isn't that right?

17 MR. AUERHAHN: Objection.

18 THE COURT: Sustained.

19 MR. CARNEY: Your Honor, the government brought out
00:40 20 evidence that he took it off his computer. I'm just asking him
21 why. And they opened the door by bringing this up.

22 THE COURT: The objection is sustained.

23 MR. CARNEY: May I make an offer of proof?

24 THE COURT: You can do it at the break.

25 MR. CARNEY: If allowed to answer, he would say yes.

1 MR. AUERHAHN: Move to strike.

2 THE COURT: The jury will disregard the comment. It's
3 not evidence.

4 Q. The prosecutor asked you about whether Tarek went through
5 some physical training activity, right?

6 A. Yes, sir.

7 Q. And it's fair to say that this talk of physical training
8 activity never made it really beyond the talking stage --

9 A. Yes.

00:41 10 Q. -- isn't that right?

11 A. Yes.

12 Q. You'll have -- I'm sorry. You'll have to speak up.

13 A. I apologize. Yes, sir.

14 Q. Best way to do it, I suggest, pretend you're talking to
15 the jurors in the back row because, if they can hear you, we
16 all will hear you.

17 Now, the prosecutor brought out that -- something about a
18 martial arts program, remember?

19 A. Yes, sir.

00:41 20 Q. And this was a program offered by someone at MIT, correct?

21 A. Yeah. That's where he held these martial arts events,
22 yes, sir.

23 Q. These were open to the public, correct?

24 A. That was my understanding.

25 Q. And it was a good physical exercise program, wasn't it?

1 A. I never attended so I don't know, sir.

2 Q. You recognize it to be physical exercise, right?

3 A. Yes, sir.

4 Q. With all due respect to my client, he could afford to lose
5 a couple of lbs back in the day; would that be fair to say?

6 A. We all could have back then, sir.

7 Q. But I'm asking about Tarek in particular.

8 A. Yes.

9 Q. And there also was never any talk that attending a free
00:42 10 martial arts class at MIT was to train for Jihad, isn't that
11 correct?

12 A. Not in my recollection, sir.

13 MR. CARNEY: May I approach the witness, please?

14 THE COURT: You may.

15 Q. Would you just read from where I'm pointing?

16 A. Line 20?

17 Q. Down to the bottom and then just up to the first paragraph
18 on the next page.

19 A. Yes, sir. (Reading).

00:43 20 Q. So it is fair to say that you don't remember ever having a
21 discussion with Tarek about that subject, connecting martial
22 arts to Jihad, isn't that true?

23 A. Yes. I don't recollect having a conversation to that
24 effect.

25 Q. Of ever having a conversation with him about that?

1 A. I don't recollect, no, sir.

2 Q. Now, we saw some photos that were taken yesterday from a
3 trip to New York City; do you recall those?

4 A. I do, sir.

5 Q. Now, that trip to New York City was a trip by you and
6 Tarek and Ali Abousamra and one other person, right?

7 A. Ali Aboubakr, sir.

8 Q. Pardon me?

9 A. Ali Aboubakr.

00:44 10 Q. I'm sorry. You're correct. Ali Aboubakr. And the fourth
11 person was?

12 A. I believe, Ibrahim Ismail, sir.

13 Q. The purpose of you going to New York was to buy books?

14 A. That is correct.

15 Q. You were going to go to certain bookstores in New York
16 City and purchase books, right?

17 A. Yes, sir.

18 Q. There was no discussion ever during that trip of 9/11, was
19 there?

00:45 20 A. I don't recollect, sir.

21 Q. There was no discussion on that trip about al Qa'ida,
22 right?

23 A. I have no recollection, sir.

24 Q. You went to various locations in New York, right?

25 A. Yes, sir.

1 Q. And at one point, it was suggested, go to see Ground Zero,
2 right?

3 A. Correct.

4 Q. Had you ever been there in person --

5 A. I don't believe so.

6 Q. -- prior to that?

7 A. I don't believe so, sir.

8 Q. And the four of you said, Let's go see that?

9 A. Yes, sir.

00:45 10 Q. I mean, as terrible as it might sound, it's something that
11 many, many tourists go to see when they're in New York, right?

12 A. I believe so, yes.

13 Q. And that's what you were doing, to go to see it, right?

14 A. Yes.

15 Q. The prosecutor asked you yesterday about, one of the
16 photos, you're not smiling, right?

17 A. Yes, sir, yes.

18 Q. Well, when you testified before the grand jury, the
19 prosecutor asked you why you weren't smiling, right?

00:46 20 A. Correct.

21 Q. Why weren't you smiling?

22 A. I believe my remark was something about how I didn't
23 appear well in photos or something to that effect, sir.

24 Q. Would your words be, "I'm not that photogenic"? Does that
25 sound right?

1 A. That sounds about right, sir.

2 Q. Is that the reason you weren't smiling?

3 A. Probably one of the reasons. I usually don't smile in
4 pictures, so --

5 Q. I'd like to show you a couple of other photos from that
6 trip so you can tell us who's in it and what they depict.

7 MR. CARNEY: Can I have 1123, please?

8 Your Honor, after I lay the foundation, I will be
9 offering them.

00:47 10 THE COURT: These are not in evidence? This is --
11 okay.

12 MR. CARNEY: Not yet.

13 THE COURT: Is it your computer you want it?

14 MR. OH: Yes, sir.

15 MR. AUERHAHN: Your Honor, if these are the
16 photographs that are attached to the email, then they are in
17 evidence as part of the email. I believe it's 354A through
18 double -- I forget the last letter. The photographs from the
19 trip are all in evidence as part of the government's case. I
00:47 20 don't know if we need a duplicate exhibit.

21 MR. CARNEY: I've got them by these numbers, and these
22 are photos the government did not show the jury. So I didn't
23 realize they would be considered --

24 THE COURT: Go ahead. If they're redundant, that's
25 okay.

1 MR. CARNEY: Then may these be shown to the jury since
2 they're in evidence in another form?

3 MR. AUERHAHN: No objection. I'm pretty sure this one
4 was, the one on the screen.

5 THE COURT: I think it was, too. At some point,
6 you'll offer them, and the clerk will make the entry that they
7 have been admitted as the new numbers.

8 MR. CARNEY: Yes, your Honor.

9 THE COURT: I gather you want to use the new numbers
00:48 10 for clarity sake?

11 MR. CARNEY: Yes, your Honor. Perhaps what -- I'll
12 read off the proposed numbers as I go along.

13 THE COURT: Fine.

14 Q. Mr. Spaulding, I'm showing you Exhibit 1123. Do you
15 recognize that photo?

16 A. I do, sir.

17 Q. Who's in that photo?

18 A. Ali Aboubakr, sir.

19 Q. Ali Aboubakr?

00:48 20 A. Yes, sir.

21 Q. Where was this photo taken during the trip, if you know?

22 A. I don't recollect at which time it would have been taken,
23 sir.

24 MR. CARNEY: Photo 1124, please.

25 Q. I'd like you to look at three photos consecutively: 1125

1 and 1126. These are three consecutive photos of going over a
2 bridge?

3 A. Yes, sir.

4 Q. Are you familiar enough with New York to know what bridge
5 that is?

6 A. I don't know the proper name for the bridge, sir.

7 Q. Let's look at 1127. Who is that?

8 A. That is Ibrahim Ismail, sir.

9 Q. He's the fourth person who went with you?

00:49 10 A. Yes, sir.

11 MR. CARNEY: 1134, please.

12 Q. Perhaps this relates also to the need for martial arts
13 training. But can you identify who this person is?

14 A. That is Mr. Mehanna, sir.

15 MR. CARNEY: And, finally, 1133, please.

16 Q. Who is that?

17 A. That's also Tarek.

18 Q. And that's during the trip with his friends?

19 A. Yes, sir.

00:50 20 MR. CARNEY: Your Honor, I would ask that all of those
21 be admitted, please.

22 THE COURT: All right.

23 (Exhibit Nos. 1123-1127 and 1133-1134 received into evidence.)

24 Q. Now, the prosecutor brought out that sometimes you used
25 so-called code words, right?

1 A. Correct.

2 Q. Isn't it fair that these code words were often said in a
3 joking manner?

4 A. Many of them were, yes, sir.

5 Q. And that it would cause you to laugh or smile by using
6 such transparent code words?

7 A. Yes, sir.

8 Q. The prosecutor brought up the theory of progression
9 yesterday, remember?

00:51 10 A. I do, sir.

11 Q. And even that was something Tarek talked about often in a
12 joking manner, right?

13 A. I don't recollect, sir.

14 Q. Do you remember him being half-joking when he would talk
15 about that?

16 A. I don't recall, sir.

17 Q. All right.

18 MR. CARNEY: May I approach the witness, please?

19 THE COURT: You may.

00:51 20 Q. Could you read this paragraph to yourself, sir?

21 A. Certainly. (Reading).

22 Q. Just look up to me when you're done, please.

23 Does that refresh your memory that Tarek appeared to be
24 half-joking at times talking about this?

25 MR. AUERHAHN: Objection, your Honor. What's "this"?

1 MR. CARNEY: The term "progression."

2 MR. AUERHAHN: Your Honor, there's nothing in the
3 paragraph he showed him about progression.

4 THE COURT: Well, I haven't seen it, but you may have
5 the question whether that refreshes the witness' memory.

6 Q. Does that refresh your memory?

7 A. Somewhat, sir.

8 Q. Is it fair to say that when he would discuss that he may
9 have been half-joking?

00:53 10 A. Yes, sir.

11 Q. The prosecutor brought up that occasionally you would have
12 movie nights, right?

13 A. Yes.

14 Q. And these movie nights would often involve feature films
15 that would appear at movie theaters, right?

16 A. Yes, sir.

17 Q. So that movie night might be an opportunity to watch a Jet
18 Li movie, for example?

19 A. Yes, sir.

00:53 20 Q. You and your friends liked Jet Li, apparently, right?

21 A. Yes, sir, Jet Li and --

22 Q. Another man named Chan, another actor?

23 A. I don't recall -- yes, movie -- Jet Li movies and other
24 action movies of that sort, sir.

25 Q. So that your circle liked watching action movies, right?

1 A. That is correct.

2 Q. Would you say that that's a pretty common thing about
3 persons your age group at that time?

4 A. I would suspect so, yes, sir.

5 Q. Guys watching action movies?

6 A. Yes.

7 Q. Do you remember watching another one, for example, a movie
8 night where you saw V for Vendetta?

9 A. I don't recall watching that movie with him in particular,
00:54 10 but it would have been movies of that nature, sir.

11 Q. So that when the prosecutor suggested that movie nights
12 were about watching just Jihadi videos, that would be
13 inaccurate, right?

14 A. Yes, sir.

15 Q. Tarek often made jokes in many of these chats, didn't he?

16 A. He did, sir.

17 Q. For example, he would make jokes about extremist views,
18 wouldn't he?

19 A. Yes, sir.

00:54 20 Q. For example, he would joke that if you obeyed a stop sign,
21 well, then you were betraying your faith because you were
22 honoring a manmade law, right?

23 A. That is correct, sir.

24 Q. You would exchange photos of something like a traffic
25 light that had been knocked down in an accident, and he would

1 say, Here's another example of a person engaging in terrorist
2 activity, right?

3 A. Yes, sir.

4 Q. Because by knocking down a traffic light, you were
5 knocking down something related to manmade law, right?

6 A. That is correct.

7 Q. Now, as pathetic as the attempts might be at times, there
8 was a lot of joking along and on these instant messages, too,
9 right?

00:55 10 A. Yes, sir, very much.

11 Q. Now, all of these chats and postings that you were asked
12 to look at by the prosecutor came from the period of late 2005
13 and into 2006, correct?

14 A. I believe that's when most of them are from.

15 Q. And he sent you a great big package of them, right?

16 A. He did.

17 Q. And you told us yesterday that you didn't read every
18 single one of them, right?

19 A. I did look through them, yes, sir.

00:56 20 Q. Pardon me?

21 A. I did look through them, yes, sir.

22 Q. Did you look at them carefully?

23 A. I didn't get a chance, obviously, to read each page, no,
24 sir.

25 Q. You had better things to do?

1 A. Yes. I have numerous responsibilities. So I don't have a
2 lot of time to sit down and read and study.

3 Q. Tell us what some of your responsibilities are.

4 A. I work two jobs.

5 Q. Don't tell me. Tell the members of the jury, please.

6 A. I work two jobs, ten-hour days, five days a week. Working
7 in the educational field, I deal with hundreds of students and
8 in different capacities. I also have numerous other family
9 responsibilities, personal responsibilities, social
00:57 10 responsibilities, et cetera.

11 MR. CARNEY: May I approach the witness, please?

12 Q. Would this be a fair approximation of about the stack of
13 material that the prosecutor sent you?

14 A. Pretty close, yes.

15 Q. And this contains, if you recognize these, chats and all
16 between you and Tarek?

17 A. Yes.

18 Q. Well, I thought I would have them -- have you read them
19 all in full so the jury would know what every single one of
00:57 20 these says.

21 A. Would you like me to start?

22 Q. But then I came to my senses.

23 A. Okay.

24 Q. But I would want to ask you about a couple things. These
25 IMs, chats, if you will, or postings that you put on, but I'll

1 focus first on the chats. These were individual conversations
2 that you would be having with your friend that you thought were
3 private conversations between two guys, right?

4 A. Yes, sir.

5 Q. Tarek could sometimes be crude on them, right?

6 A. Yes, sir.

7 Q. Tarek would make bad jokes on them, wouldn't he?

8 A. Correct.

9 Q. He would insult people, right?

00:58 10 A. Yes, sir.

11 Q. He would be gross sometimes, wouldn't he?

12 A. Yes, sir.

13 Q. He would say things that at times would be appalling to
14 say publicly, right?

15 A. That is true.

16 Q. But in a private conversation between two guys, especially
17 on the internet and the anonymity of looking at a video screen,
18 it was easier to say those things by him and you, right?

19 A. Yes, sir.

00:59 20 Q. And as bad as things that Tarek said, you said them
21 equally bad, didn't you?

22 A. I did, sir.

23 Q. Stupid guy comments about stuff, right?

24 A. Yes, sir.

25 Q. Now, in those postings and chats, you said some things

1 that you sincerely regret making, don't you?

2 A. I do, sir.

3 Q. They're embarrassing to you that you made them?

4 A. Yes, sir.

5 Q. For example, you put on a posting that praised the murder
6 of a filmmaker who had been critical of the treatment of
7 Islamic women, right?

8 A. I don't recollect that, sir.

9 Q. Do you know who Theo van Gogh is, sir?

01:00 10 A. I do, sir.

11 Q. Tell the jury who Theo van Gogh is.

12 A. He is a Dutch filmmaker who was assassinated by a Moroccan
13 youth, like you said, for producing a film that was perceived
14 as being critical of Islam.

15 Q. And he was killed by a Muslim, right?

16 A. Yes, sir.

17 Q. Do you remember commenting on that killing?

18 A. I would recall commenting on it, but I don't recall what
19 my specific comments were, sir.

01:00 20 MR. CARNEY: May I approach, your Honor, please?

21 THE COURT: All right.

22 MR. CARNEY: 1144.

23 Q. What was your handle or name on the postings?

24 A. For internet forum?

25 Q. Yes.

1 A. Brother Mujahid, sir.

2 Q. I direct you to here.

3 A. Uh-huh.

4 Q. You see where I'm pointing?

5 A. Yes, sir.

6 Q. And now over to here. Is that your posting on the murder
7 of this man?

8 A. It appears to be so, sir, yes.

9 Q. Would you please read for the jury, in a loud voice so
01:01 10 they can hear you, what your words are that you posted on that
11 web forum?

12 A. "I was so happy and still am about what these brothers did
13 to Theo van Gogh. This fat little piggy" --

14 Q. Not so fast. Tell you what. Let me see if I can read it,
15 and you tell me if I'm reading your words exactly. "I was so
16 happy and still am about what these brothers did to Theo van
17 Gogh. This fat little piggy got what he had coming to him. It
18 truly made the last Ramadan a blessed month." Did I read that
19 correctly?

01:02 20 A. You did, sir.

21 Q. Another subject you talked about would be glorifying the
22 maiming and mutilation of American soldiers, isn't that true?

23 A. Yes, sir.

24 Q. There were terms used by you and Tarek occasionally,
25 characterizing it as Texas Barbecue, isn't that right?

1 A. I believe terms of that sort were used, yes.

2 Q. And there was a particular incident that happened that
3 caused you to be very virulent about using the language
4 glorifying the mutilation and maiming of soldiers; do you
5 remember that?

6 A. Not at the moment, sir.

7 Q. Do you remember there was an instance where American
8 soldiers from a rogue outfit gang-raped a 14-year-old girl,
9 Muslim girl?

01:03 10 A. Yes, sir.

11 Q. And then after gang-raping the Muslim girl, they killed
12 her parents, right?

13 A. Yes, sir.

14 Q. And then they set fire to the house to cover up the
15 evidence, right?

16 A. Yes, sir.

17 Q. And this became well-known throughout the country of Iraq,
18 that American soldiers had done this atrocity, right?

19 A. Correct.

01:03 20 Q. In its aftermath, the unit that had done this horrific
21 crime was identified publicly, right?

22 A. I believe so, yes.

23 Q. Two members of that unit were kidnapped and killed, right?

24 A. Yes.

25 Q. And that became a source of discussion between you and

1 Tarek and others in your circle of friends and also on the
2 internet, these postings, right?

3 A. Yes, sir.

4 Q. And the feeling was that for the atrocity committed by the
5 Americans it was justified for an atrocity to be committed
6 against them, right?

7 A. Correct.

8 Q. And that was the context in which you were talking, right?

9 A. Yes.

01:04 10 Q. Do you remember the words that you said --

11 A. I don't.

12 Q. -- when you made a posting?

13 A. I don't recall, sir, no.

14 MR. CARNEY: Your Honor, if it didn't go in earlier, I
15 offer the previous exhibit, 1144, into evidence, please.

16 THE COURT: Any objection to 1144?

17 MR. AUERHAHN: Your Honor, what appeared on the screen
18 did not appear to be what he was showing the witness. I don't
19 know if there's a problem with the numbers. Perhaps Mr. Oh can
01:05 20 correct that. In terms of the portion that he read, I have no
21 objection, but we just will have to straighten out what the
22 exhibit -- whether it's --

23 MR. CARNEY: I bet it's my fault. Can I have one
24 moment to check on the number?

25 THE COURT: All right.

1 MR. CARNEY: Are you able to put it only on this
2 screen, your Honor?

3 THE COURT: Yes. Well --

4 MR. CARNEY: Yes.

5 THE COURT: All counsel, yes.

6 MR. CARNEY: Thank you. It is 1144, your Honor. On
7 Page 1 of 1144, at the very bottom -- could we see the bottom
8 of 1144? That's where the post starts, "Message from Brother
9 Mujahid," and then the posting that he read is the top of the
01:06 10 next page.

11 MR. AUERHAHN: No objection, your Honor.

12 THE COURT: For the whole exhibit?

13 MR. AUERHAHN: Yes.

14 THE COURT: Okay. And that is 1144?

15 MR. CARNEY: Yes, it is, your Honor.

16 THE COURT: Okay. So that's admitted.

17 (Exhibit No. 1144 received into evidence.)

18 THE COURT: Now you have another one?

19 MR. CARNEY: 1145, please.

01:06 20 Q. Sir, I just ask you to take a look at this, on to the next
21 page, and if you could just read it briefly, please. No, to
22 yourself.

23 A. (Reading.)

24 Q. This is another posting by you as Brother Mujahid, right?

25 A. Yes, sir.

1 Q. And this is a posting on Tibyan Publications by you?

2 A. It is, sir.

3 Q. Tell me if I'm reading this correctly, please. "Allaahu
4 Akbar." What does that phrase mean?

5 A. God is great.

6 Q. "It is heartwarming to see these American crusaders maimed
7 and mutilated. This is what they did to our brothers and
8 sisters in Afghanistan and Iraq. Now what they have inflicted
9 upon the Muslims has returned upon them." Did I read

01:08 10 accurately your words?

11 A. You did, sir.

12 Q. Tell the jurors what you meant when you used that
13 language.

14 A. That --

15 Q. Not me, the person in the last row.

16 A. It would have been within the context of excitement at
17 seeing some sort of retaliation against America or American
18 soldiers for perceived injustices that they had committed
19 against Muslims.

01:08 20 Q. You also used anti-Semitic language in your postings,
21 didn't you?

22 A. Regrettably, yes.

23 Q. For example, there was an Israeli soldier who was
24 kidnapped, right?

25 A. I believe so, yes.

1 Q. And, in fact, that Israeli soldier was held for years and
2 was only released a month or two ago in an exchange with
3 prisoners; did you read that?

4 A. I did, sir, yes.

5 MR. CARNEY: May I approach again, please? 1146,
6 please.

7 Q. The soldier's name is Gilad Shalit, is that correct?

8 A. Yes, sir.

9 Q. I'd ask you to read this and tell me -- read it to
01:09 10 yourself and tell me if you recognize this as a posting that
11 you made.

12 A. (Reading). Yes, sir, it is.

13 Q. Would you tell me if I'm reading this correctly? "Here is
14 a picture of the son of a pig, i.e., Jew, that was captured by
15 the Palestinians. This faggot Jew's name is Gilad Shalit." Is
16 that what you wrote?

17 A. It is, sir.

18 Q. You look back on these statements with horror, don't you?

19 A. I do, sir.

01:10 20 Q. These were your statements, right?

21 A. Yes, sir.

22 Q. Your beliefs, right?

23 A. Yes, sir.

24 Q. And there's no way you can express how much you regret
25 speaking like this when you were younger; is that fair to say?

1 A. It is, sir.

2 Q. You would never, ever say these things now, would you?

3 A. I should certainly hope not, sir.

4 Q. You would never say it, whether it was publicly or
5 privately, would you?

6 A. Correct.

7 Q. Now, as you got older and more mature, you continued to be
8 friendly with Tarek, right?

9 A. Yes.

01:11 10 Q. And it's fair to say that your views and his views became
11 more moderate, right?

12 A. They did, sir.

13 Q. Became more mainstream, right?

14 A. Yes.

15 Q. You and Tarek continued to go onto web forums, didn't you?

16 A. We did.

17 Q. And these web forums allowed you to post your views and
18 Tarek's views, correct?

19 A. Yes, sir.

01:11 20 Q. And both of you put your new views on the internet, didn't
21 you?

22 A. We did.

23 Q. On these web forums with people?

24 A. Yes.

25 Q. You also discussed these with friends, right?

1 A. Yes.

2 Q. For example, yesterday afternoon, I believe you talked
3 about how you tried to persuade people that Aman was something
4 that every faithful Muslim had to follow, right?

5 A. Yes.

6 Q. And just to remind us, Aman is the principle in Islam that
7 if you are living in a country where you are practicing your
8 religion and are allowed to practice your religion you cannot
9 engage in any attack, right?

01:12 10 A. Yes, sir.

11 Q. And so you would go on forums and present these views to
12 convince people, right?

13 A. Yes, sir.

14 Q. And these discussions continued beyond just forums but
15 also to friends or meetings at the mosque, right?

16 A. I don't recollect talking about it outside of the forum,
17 sir.

18 Q. You certainly talked about it with Tarek?

19 A. Yes.

01:12 20 Q. And in the group that you were friends with, right?

21 A. Yes, yes.

22 Q. You didn't talk about it with Abousamra much because he
23 was so violently in disagreement with you, right?

24 A. Yes.

25 Q. When Tarek would get on these forums, he would try to cite

1 from the Qur'an or Hadiths to show that the extreme views were
2 unsupported by Islamic jurisprudence, right?

3 A. Yes, sir.

4 Q. And as we've heard previously, Tarek ultimately was banned
5 from Tibyan Publications because of his moderate views,
6 correct?

7 A. Yes, sir.

8 Q. And the same thing happened to you, didn't it?

9 A. It did, sir.

01:13 10 Q. Tarek was arrested by the FBI in November of 2008,
11 approximately --

12 A. Yes.

13 Q. -- is that right?

14 He was charged with making a false statement to the FBI,
15 right?

16 A. Correct.

17 Q. You followed this, didn't you?

18 A. Yes, sir.

19 Q. The lie was that he said he didn't know Daniel Maldonado
01:13 20 was in Somalia, right?

21 A. Yes, sir.

22 Q. He was arrested in approximately November of 2008, you
23 said?

24 A. I believe that's when it was, sir.

25 Q. And he was released on bail in December of 2008, right?

1 A. Approximately, yes.

2 Q. And then in 2009, in November of 2009, he was arrested
3 again and charged with the offenses that are before this court
4 now, right?

5 A. Yes, I believe that's the time line, sir.

6 Q. And then held without bail, right?

7 A. Yes, sir.

8 Q. Now, you have said that Tarek's arrest in 2008 was a
9 wake-up call to you, right?

01:14 10 A. Correct.

11 MR. AUERHAHN: Objection. Relevance.

12 THE COURT: Sustained.

13 MR. CARNEY: May I be heard, please?

14 THE COURT: All right.

15 (SIDEBAR CONFERENCE AS FOLLOWS:

16 MR. CARNEY: Your Honor, this evidence will go
17 directly to the witness' credibility. Indeed, it is my most
18 important evidence related to his credibility. I expect the
19 witness will say that when Tarek was arrested, the witness will
01:15 20 say he saw it as a wake-up call. He realized that what he and
21 Tarek had been talking about can now lead to prosecution. And
22 he said that what he wanted to make sure of is that he did not
23 suffer the same fate as Tarek. And he left the --

24 THE COURT: I get the drift.

25 MR. CARNEY: And it's the reason why he's cooperating,

1 is what my --

2 THE COURT: Right.

3 MR. AUERHAHN: It's just another attempt to get in the
4 questions that the Court sustained, which was his belief in
5 terms of criminality of certain actions.

6 THE COURT: That was slightly different, but if --
7 this goes to whether he thinks he can curry favor with his
8 testimony. So to that extent this --

9 MR. AUERHAHN: I don't think there's any basis for the
01:16 10 jury to think that he's trying to curry favor with the
11 government.

12 THE COURT: That's up to them, but you can have it for
13 that purpose.

14 MR. CARNEY: Thank you.

15 . . . END OF SIDEBAR CONFERENCE.)

16 MR. CARNEY: If I may have the question?

17 THE COURT: Go ahead.

18 MR. CARNEY: Thank you.

19 Q. You told -- or you said that Tarek's arrest was a wake-up
01:16 20 call to you, correct?

21 A. Yes, sir.

22 Q. That's the exact phrase you used, "a wake-up call" to you,
23 right?

24 A. Yes, sir.

25 Q. And you said that you now realized that the conversations

1 you had been having with him apparently were not harmless talk,
2 right?

3 A. Yes, sir.

4 Q. That's another phrase you used to characterize what you
5 and Tarek and your friends had been doing, "harmless talk,"
6 right?

7 A. Yes, sir.

8 Q. You had posted -- or you posted a comment on the forum in
9 2008, didn't you, about what happens when someone becomes a
01:17 10 target of the FBI who is a Muslim; do you remember that?

11 MR. AUERHAHN: Objection, your Honor.

12 A. I don't, sir.

13 MR. CARNEY: This is a --

14 THE COURT: Well, let me see you.

15 (SIDEBAR CONFERENCE AS FOLLOWS:

16 MR. AUERHAHN: I assume it's this exhibit?

17 MR. CARNEY: Yes. Here's the exact post I want to
18 offer. There was a posting about the fact that mosques were
19 under surveillance by the federal government.

01:18 20 THE COURT: He posted that?

21 MR. CARNEY: No. This was -- someone else posted
22 this. There's going to be a thread, your Honor.

23 THE COURT: Right. I just saw it says "Daniel."
24 That's all.

25 MR. CARNEY: Oh, I believe he did post that, yes.

1 Don't take this the wrong way, but thank you.

2 And then someone else makes a post, and then another
3 person makes a post that says, "So keep your nose clean. Stay
4 out of trouble." Then there's another post. It says -- then
5 we get to Daniel again.

6 THE COURT: Okay.

7 MR. CARNEY: And I'm offering it for the exact same
8 reason, that this is reflecting why he would feel that he's got
9 to do everything the government wants him to do.

01:19 10 MR. AUERHAHN: It seems to me his statement back in
11 response to a post about concern of Muslims under surveillance
12 that that -- criticizing the FBI in a post should not be a
13 proper way to -- I don't understand what the purpose of it is
14 other than to be able to say through the witness that don't
15 trust the FBI. They manipulate the system. What this has to
16 do with this witness and this testimony, I mean, it's purely an
17 attempt to make argument through the witness to the jury.

18 MR. CARNEY: I disagree. It goes directly to his
19 credibility and bias because it's showing why he is afraid and
01:20 20 why he would be cooperating and why he would be saying it.

21 MR. AUERHAHN: Why isn't it hearsay?

22 MR. CARNEY: It's his statement. It's why he is
23 cooperating.

24 MR. AUERHAHN: Just because it's his statement doesn't
25 mean he can read something that's an out-of-court statement.

1 MR. CARNEY: It goes directly to his bias and
2 credibility, and on bias, I believe I've got the --

3 THE COURT: The bias that is relevant is his present
4 bias.

5 MR. CARNEY: Yes. And this is reflecting --

6 THE COURT: It is something --

7 MR. CARNEY: This is right before he began
8 cooperating.

9 THE COURT: Right. But I think you can ask him --

01:20 10 MR. CARNEY: We've had dozens --

11 THE COURT: I'm thinking about the hearsay objection.

12 MR. CARNEY: It doesn't matter what the truth is.

13 THE COURT: It goes to state of mind, but the state of
14 mind -- you would have to connect it to a present statement.

15 MR. CARNEY: All right.

16 MR. AUERHAHN: Well, you can ask him now, Are you
17 lying because you think, if you don't lie, then the FBI is
18 going to prosecute you?

19 MR. CARNEY: If that were the case, I could never put
01:21 20 in --

21 THE COURT: You can use it.

22 . . . END OF SIDEBAR CONFERENCE.)

23 MR. CARNEY: Number 1143, please.

24 Q. In 2008, you put a post on this web forum, didn't you?

25 A. Yes.

1 Q. And this was about a report that mosques were under
2 federal surveillance, and the Muslim community was concerned
3 and civil rights groups were upset?

4 A. Yes, sir.

5 Q. And you basically posted the article itself, correct?

6 A. Correct.

7 Q. And then a thread began, correct?

8 A. Yes.

9 Q. With other people commenting, is that right?

01:22 10 A. Yes, sir.

11 Q. And then one person named Kamals --

12 MR. AUERHAHN: Your Honor, I object. I thought it
13 would be just his post, just his -- that last comment.

14 THE COURT: I think he can set the context.

15 Q. So the person Kamals, identified as a junior member,
16 posted a response and basically said, So keep your nose clean
17 and stay out of trouble, right?

18 A. Yes, sir.

19 Q. And then another person put a post following that, saying,
01:22 20 "Tell that to the hundreds, if not thousands, of Muslims
21 worldwide who have been kidnapped by CIA agents and put in
22 secret prisons where they have been tortured or killed. Their
23 only crime was that they spoke against the U.S. policy towards
24 Muslims and Islam. This is no fairytale. It is reality that
25 has been documented by many. It has nothing to do with being

1 naughty, but it has everything to do with speaking against
2 injustice and the terror of America and its allies," correct?

3 A. Yes, sir.

4 Q. Then you put a post on there, correct?

5 A. Yes, sir.

6 Q. And you start the post identifying the name Kamal, right?

7 A. Yes, sir.

8 Q. He was the one who said, Oh, just do good, right?

9 A. Yes.

01:23 10 Q. And would you read what that post says, please.

11 A. (Reading.)

12 Q. Are those your words?

13 A. Yes, sir.

14 Q. "Kamal, do you live in the United States or have you ever
15 had to deal with the Feds? As someone who has, I can tell you
16 it has nothing to do with playing nice and keeping your hands
17 clean. They are evil and malicious people who will go as far
18 to get people to bear false witness against you if they want to
19 arrest you." Does that accurately reflect your state of mind
01:24 20 in 2008?

21 A. Yes, sir.

22 Q. After that, you were brought in to meet with them,
23 correct?

24 A. At some point, yes, sir.

25 Q. And you got a lawyer, right?

1 A. Yes, sir.

2 Q. And you sought an immunity so that you could not be
3 prosecuted?

4 A. That is correct.

5 Q. You did not want to face the same fate as Tarek Mehanna,
6 did you?

7 A. No, sir.

8 Q. In the following year after this post, you left being a
9 Muslim, right?

01:25 10 A. Yes, sir.

11 Q. You renounced your Muslim beliefs?

12 A. Yes, sir.

13 Q. And now you are another faith?

14 A. Yes, sir.

15 Q. A Catholic?

16 A. Yes, sir.

17 Q. And to your knowledge, you'll never be charged with
18 anything you said or did, right?

19 A. I still have thoughts about that, sir.

01:25 20 Q. You still worry about it?

21 A. Yes, sir.

22 Q. Do you hope that this will make sure that you don't --
23 that your testimony at this trial will ensure that they don't
24 charge you like they charged Tarek? Is that what you hope?

25 A. That's not my intention for being here, no, sir.

1 Q. I understand. But is that your hope? You hope you never
2 get charged?

3 A. Well, of course, I hope I don't get charged with it.

4 Q. That's the question, Mr. Spaulding.

5 A. Yes, yes, sir.

6 MR. CARNEY: That's all I have. Thank you.

7 THE COURT: Mr. Auerhahn.

8 MR. AUERHAHN: Thank you.

9 REDIRECT EXAMINATION BY MR. AUERHAHN:

01:26 10 Q. Sir, let me first start with this concept of Aman, about
11 not attacking a country within its borders if you are living
12 and practicing as a Muslim in that country. Does it prevent
13 you from engaging in attacks against that country overseas?

14 A. I don't recall the religious ruling on this specific
15 aspect, sir.

16 Q. What about if that country is at war with Islam?

17 A. Would you --

18 Q. Would you then be free to attack it and its forces
19 overseas?

01:27 20 A. You have to give me a minute to try to recall the
21 religious -- from what I recall, theoretically, you could, but
22 you would have to renounce your citizenship or any sort of
23 claim of -- of residency or citizenship with that country so
24 that you make clear your opposition to them. But if you still
25 want to enjoy the rights of your citizenship, then, no.

1 Q. So if that country is at war with Islam, say, the United
2 States and Iraq, the United States and Afghanistan, then it
3 would be acceptable to go fight American forces in Iraq and
4 Afghanistan just as Mr. Abousamra and Mr. Mehanna tried to do?

5 MR. CARNEY: I object to the question.

6 THE COURT: Sustained to the form of the question.

7 Q. So if -- so if I understand you correctly, within the
8 concept of Aman, if the United States is at war with Islam and
9 attacking them overseas, it is acceptable within that concept?

01:28 10 A. Provided you renounce your citizenship.

11 Q. Just yes or no. Is it acceptable --

12 MR. CARNEY: I object, your Honor.

13 THE COURT: If it's possible to answer it yes or no,
14 you should do that. If you have to qualify it, you may qualify
15 it.

16 Q. Is it acceptable within that concept?

17 A. With that qualification, yes.

18 Q. Okay. You met Tarek Mehanna in 2004, correct?

19 A. Yes, sir.

01:28 20 Q. So you don't know what his views were in 2003 with
21 reference to domestic attacks in the United States, correct?

22 A. No, sir.

23 Q. Mr. Carney asked you a question about --

24 MR. AUERHAHN: Can we bring up Exhibit 648, please?

25 Maybe the next page.

1 Q. Do you remember he asked you about this, that some website
2 was selling one of Mr. Mehanna's translations?

3 A. Yes, sir.

4 Q. And there was discussion about them making money on it.
5 And Mr. Mehanna said something, Well, we're serving God, and
6 it's not about the money; do you recall that?

7 A. Yes, sir.

8 Q. Now, did he say something -- and this is the particular
9 chat, correct? And the product we were talking about is the
01:29 10 Umar Hadeed video, correct?

11 A. Yes, sir.

12 Q. Before he said, "Luckily for us, we are doing this for
13 Allah's pleasure," did he say something else?

14 A. Yes, sir.

15 Q. Okay. What he said before that, referring to the Umar
16 Hadeed video, "As long as the message gets out"; do you
17 remember that?

18 A. I don't recall it apart from reading it now, sir.

19 Q. Okay. But you see it, and that's what it says right
01:30 20 there, correct?

21 A. Yes, it does say that.

22 Q. What was the message of the Umar Hadeed video?

23 A. To encourage support for the mujahideen in Iraq, sir.

24 Q. And so his principle, first concern was that that message
25 get out?

1 MR. CARNEY: I object, your Honor. It's just
2 redirect. The form of the question.

3 THE COURT: Sustained.

4 Q. Was that the first reaction he had to your statement
5 concerning somebody making money off this particular video?

6 A. According to this transcript?

7 Q. Yes.

8 A. Yes.

9 Q. And in addition to supporting the mujahideen in Iraq, what
01:31 10 else do you remember about the GUH video?

11 A. In terms of content or --

12 Q. Yes.

13 A. Just as I believe I explained yesterday, that it depicts
14 sort of different individuals who had either gone to Iraq from
15 other Arab countries or who were already from Iraq committing
16 different attacks against either, I believe, American soldiers
17 and Iraqi security forces.

18 Q. Many of these individuals were interviewed in advance of
19 going on suicide operations, correct?

01:31 20 A. I believe some of them were, yes, sir.

21 Q. Mr. Carney asked you some questions about statements Mr.
22 Mehanna made about al Qa'ida or whether he received any
23 direction from al Qa'ida, things like that; do you remember
24 those questions?

25 A. Yes, sir.

1 MR. AUERHAHN: Can we play the clip -- I believe it's
2 17 from the GUH video, please.

3 MR. CARNEY: I object. This is beyond the scope of
4 cross.

5 MR. AUERHAHN: I think it's right --

6 THE COURT: No. I think -- overruled. I think it's
7 within it. This is something that's in evidence, I take it.

8 MR. AUERHAHN: Yes, your Honor.

9 Q. Sir, this is a segment from the GUH video. Does it
01:32 10 identify itself as "The Organization of Al Qa'ida in Iraq"?

11 A. It appears so, yes.

12 MR. AUERHAHN: If we can continue.

13 (Video played.)

14 MR. CARNEY: Your Honor, I renew my objection. All I
15 asked on cross was that this witness said to Tarek that the
16 video was being sold and Tarek wasn't getting any money, and
17 Tarek said, I don't care.

18 THE COURT: I think the line of questioning is
19 legitimate as redirect.

01:33 20 MR. AUERHAHN: Thank you, your Honor.

21 (Video played.)

22 Q. Now, "To whoever sees or hears this CD or hears this
23 recording" --

24 MR. AUERHAHN: Sorry. Did I do that?

25 MR. BRUEMMER: It went to the end.

1 Q. It said to come join the brothers in Iraq. Was that the
2 central message of the Umar Hadeed video?

3 A. Again, I haven't seen it for a while apart from what
4 you've just shown me now. So I don't know how much that
5 particular message plays into it, sir. I don't recall.

6 Q. Okay. By the way, Mr. Carney asked you a lot of questions
7 about Jihad. And when -- with reference to the 39 Ways to
8 Serve and Participate in Jihad, in 39 Ways, when they talk
9 about Jihad, they're talking about terrorism, isn't that
01:35 10 correct?

11 A. Can you specify what you mean by "terrorism" here, sir?

12 Q. Sure.

13 MR. AUERHAHN: If we can bring up Exhibit 25, please,
14 Page 5. First the cover, Page 1, please. First the cover,
15 Page 1.

16 Q. This is the publication, 39 Ways?

17 A. Yes, sir.

18 MR. AUERHAHN: Can we go to Page 5 now, please?

19 Q. Does it say, "Therefore, the entire world has announced
01:35 20 its war on terrorism or, rather, on Jihad"?

21 A. It does.

22 Q. So in the context of this publication, when they talk
23 about Jihad, they're talking about terrorism, correct?

24 A. It appears to be.

25 Q. Now, he also asked you some questions about --

1 MR. CARNEY: I object to that, your Honor. You can't
2 take, like, a 60-page document, put one sentence and say, So
3 this sums up the whole thing.

4 THE COURT: The evidence may stand.

5 Q. He also asked you questions about overseas-based
6 individuals; do you remember that?

7 A. I don't recollect right now, sir, no.

8 Q. He asked you, "There were no overseas-based influences
9 that you knew of that were directing or coordinating with Tarek
01:36 10 Mehanna, isn't that true?" And you said, "Not that I'm aware
11 of, no, sir." Do you remember that?

12 A. Yes.

13 Q. Okay. And, now, many of these -- the Tibyan brothers,
14 were in the United Kingdom?

15 A. That is correct.

16 Q. Last time I checked, the United Kingdom was overseas,
17 correct?

18 A. Yes, sir.

19 Q. So the answer to that question wasn't entirely accurate?

01:37 20 A. As I recall the question, it was referring to al
21 Qa'ida-related individuals, sir.

22 Q. Well, the question specifically said -- the previous
23 question or the following question may have mentioned al
24 Qa'ida, but that was just overseas individuals. So you want to
25 correct that answer?

1 A. Interpreted in light of that context, yes, sir.

2 MR. AUERHAHN: Can we go to Exhibit 661, please?

3 Q. This was the chat about the American activity against the
4 British; do you recall that chat?

5 MR. AUERHAHN: If we could go to Page 6, please.

6 Q. Do you remember this one about comparing the Islamic
7 Resistance to the Americans against the British?

8 A. Yes, sir. I believe we looked at it yesterday.

9 Q. He also specifically says, "Yeah, see if they did any
01:38 10 martyrdom operations or anything back then." And martyrdom
11 operations are suicide bombing, correct?

12 A. Yes, sir.

13 Q. Were you able to find any suicide bombing among the
14 American Colonists against the British?

15 A. Not to my recollection, sir, no.

16 Q. Now, Mr. Carney today asked you about training as
17 preparation for Jihad, and you said you don't remember any
18 conversation about that?

19 A. Yes.

01:39 20 Q. Did you testify differently yesterday?

21 A. I don't recall what my testimony was yesterday, sir.

22 MR. AUERHAHN: Okay. If I could have just a moment,
23 your Honor?

24 Q. Now, yesterday you were asked whether Mr. Mehanna did
25 anything else to prepare for Jihad. And you answered, "Just

1 like I said, to be ready, I suppose you could say, but nothing
2 specifically go here, do that type.

3 "And what do you mean by 'to be ready'? Just to be in a
4 state of physical fitness.

5 "Okay. And for the purpose of being in a state of
6 physical fitness, did he participate in any training? I
7 wouldn't use the word 'training' per se, but there was a -- he
8 did briefly attend a martial arts session put on by someone at
9 the MIT.

01:40 10 "What did Mr. Mehanna tell you about being ready? Ready
11 for what?

12 "Just in a general sense, be ready in case you need to be
13 able to do something.

14 "Something like Jihad?

15 "We're not talking about just something something. We're
16 talking about Jihad, right?" And you said, "Yeah." Do you
17 remember that?

18 A. Vaguely.

19 Q. Vaguely from yesterday?

01:40 20 A. Yes, sir. I was in here four hours. I was getting a
21 little fatigued, so --

22 Q. So you do recall that training was for the purpose of
23 preparation for Jihad?

24 A. Just to be -- the words I believe I used was "to be
25 ready."

1 Q. And the person that was teaching at MIT, that was Abu
2 Dawood, correct?

3 A. Yes, sir.

4 Q. You talked about the -- this movie night and sometimes you
5 were there to watch just feature films, not Jihadis, Jihad
6 videos?

7 A. No. We watched a variety of different movies.

8 MR. AUERHAHN: Your Honor, yesterday we discussed a
9 particular chat, Exhibit 657, which I'd like to renew my
01:41 10 request to show to the witness and read a section based on the
11 line of questioning on --

12 THE COURT: Why don't you put it on the monitor and
13 I'll look at it.

14 MR. AUERHAHN: For the Court, I draw your attention to
15 the bottom of Page 2 to the top of Page 3, starting with the
16 last line on the bottom of Page 2.

17 THE COURT: Let me see you.

18 (SIDEBAR CONFERENCE AS FOLLOWS:

19 MR. AUERHAHN: Your Honor, it seems to me, in light of
01:42 20 the cross-examination, I ask you to reconsider your ruling
21 yesterday and also in the light of some of the questions on
22 cross-examination, quite frankly, about Texas Barbecue and
23 things like that, I think there's certainly no additional
24 prejudice to this.

25 THE COURT: What do you want?

1 MR. AUERHAHN: To read that section that I pointed
2 out.

3 THE COURT: The head's off?

4 MR. AUERHAHN: Right.

5 MR. CARNEY: I don't think anything has changed.

6 Yesterday he brought out that they had movie nights. I asked
7 two questions about you also watched regular movies, too. It
8 doesn't change yesterday's ruling. It just expands that, in
9 addition to the movies that you talked about, they also watched
01:43 10 regular features. It doesn't change in any way the basis for
11 your Honor's ruling yesterday, and I suggest there's no reason
12 to reconsider it today.

13 THE COURT: Yeah. I think we should --

14 . . . END OF SIDEBAR CONFERENCE.)

15 Q. Now, Mr. Carney asked you questions about this kidnapping
16 and mutilation of American servicemen in connection -- or in
17 retaliation for acts against an Iraqi family?

18 A. Yes, sir.

19 Q. And the individuals who were kidnapped and mutilated, the
01:44 20 American servicemen, they were not the individuals who were
21 responsible for the attack, isn't that correct?

22 A. I don't believe they were, sir.

23 Q. They just happened to be from the same unit or same
24 division as the perpetrators?

25 A. That's my understanding, sir.

1 Q. So did you believe that horrific violence against American
2 servicemen, even those not personally responsible for actions
3 against Muslims, was an appropriate response?

4 A. At the time, yes.

5 Q. And Mr. Mehanna believed the same way?

6 A. I believe so, yes, sir.

7 Q. So you believed that attacks on the United States
8 servicemen --

9 MR. CARNEY: I object.

01:44 10 Q. Did you believe that attacks --

11 MR. CARNEY: I object.

12 THE COURT: Overruled. You may have it.

13 Q. Did you believe that attacks on United States servicemen
14 was an appropriate response to their being in Iraq?

15 A. Yes, sir.

16 Q. Now, the defense asked you about your being kicked off
17 Tibyan?

18 A. Yes, sir.

19 Q. You said it had to do with moderation?

01:45 20 A. It did, sir.

21 Q. Okay. And moderation is a relative term, isn't it?

22 A. I suppose so.

23 Q. Okay. And that, of course, doesn't tell the full story as
24 to why --

25 MR. CARNEY: I object. It's supposed to be direct

1 exam, your Honor, please.

2 THE COURT: Okay.

3 Q. Now, was there another reason why you were kicked off
4 Tibyan?

5 A. Just -- as I recall, our views no longer lined up with the
6 establishment there, and they decided to kick us off. That's
7 as much as I recall of the situation, sir.

8 MR. AUERHAHN: May I approach, your Honor? Actually,
9 I'd like to offer Exhibit 1136 as an exhibit, if I can first
01:46 10 show it to him and ask him to authenticate it.

11 Q. Sir, does this appear to be posts that contain some of
12 your posts on Tibyan during the same time period as the ones
13 Mr. Carney showed you?

14 A. I don't recall the dates on the ones that he showed me,
15 sir.

16 Q. Okay. But it does appear to be posts on Tibyan?

17 A. Yes, sir.

18 MR. AUERHAHN: Your Honor, I would move into evidence
19 Exhibit 1136.

01:46 20 MR. CARNEY: May we approach, please?

21 THE COURT: All right.

22 (SIDEBAR CONFERENCE AS FOLLOWS:

23 MR. AUERHAHN: I'm sorry. This is the one I showed
24 him. I'm also going to ask him about this one.

25 THE COURT: Just this top thing?

1 MR. AUERHAHN: No. Actually, there are a number of
2 chats on there that go to both -- he was kicked off Tibyan for
3 rudeness and sarcasm. It also goes to the issue of his alleged
4 moderation. Certainly nothing moderate about supporting the
5 attack on the Khobar Towers, supporting the kidnapping and
6 beheading of Paul Johnson, which is from a chat actually that
7 defense already read to the jury earlier. So they're relevant
8 to this issue of why he was kicked off Tibyan as well as this
9 alleged moderation. And this particular document, 1139, also
01:48 10 contains some similarly relevant chats during the same time
11 period as the one the defendant showed him. I can identify the
12 specific ones that I intend to use, but it seems to me the
13 entire package of chats, which were provided by the defense as
14 potential defense exhibits, are relevant, and I'd like to use
15 them.

16 THE COURT: These do not reflect the kicking off?

17 MR. AUERHAHN: They do talk about -- they do talk
18 about -- this one in particular here, many times there's
19 sarcasm and rudeness. There are other statements like that. I
01:48 20 can get my notes to the specific ones. As I said, they also --

21 THE COURT: Why can't you just show them to him and
22 see what he says about them? It seems like a lot of --

23 MR. AUERHAHN: I think I'd like to introduce the chats
24 as an exhibit so the jury can have the chats, not just the
25 memory of his choppy testimony about them. They've been

1 authenticated in the same way all those other exhibits that
2 we've introduced, that the defense introduced. These are ones
3 that Mr. Carney identified that he might be introducing in
4 cross, along with the two he did introduce. But he, for some
5 reason, chose not to do these two.

6 MR. CARNEY: These are pure hearsay statements with no
7 exception for --

8 THE COURT: They're not offered for truth.

9 MR. CARNEY: Sure. They're offered for the truth.
01:49 10 The government is offering them for the truth. If they weren't
11 true, then they wouldn't --

12 THE COURT: No. They're offering them for the fact
13 that a statement was made, a statement -- the statement's
14 truth.

15 MR. CARNEY: Why would --

16 THE COURT: He'd been rude, you mean?

17 MR. CARNEY: Yeah. I mean, that's hearsay.

18 MR. AUERHAHN: But --

19 MR. CARNEY: I don't get a chance to confront this
01:49 20 witness. It's pure hearsay. It doesn't go to the defendant's
21 state of mind on whether he got kicked off for rudeness. This
22 is a thread where people are putting on their own opinions as
23 to whether he was thrown off. He was thrown off Tibyan. And
24 so to introduce what other people think of him is just hearsay.

25 MR. AUERHAHN: It does impeach his statement that he

1 was kicked off for moderation. He's not going to find a chat
2 that says, Get out of here, you moderate.

3 MR. CARNEY: Exactly.

4 MR. AUERHAHN: So it impeaches his statement that he
5 was kicked off because of moderation. I will also go into some
6 of the chats that he posted that, as I said earlier, show not
7 moderation but anyone's evaluation of what moderation is.

8 So it's his post. It's his words about what he
9 supports and why he supports it. And, again, similar to the
01:50 10 one the defense said more than once about the one that talked
11 about we fight those who fight us, same kind of description of
12 thinking what are appropriate targets of attack and what ones
13 aren't, which was the subject of a lot of cross-examination.

14 MR. CARNEY: I reiterate this is all hearsay that is
15 only relevant if it's true. And hearsay that is being offered
16 for its truth is inadmissible. In the context of this trial,
17 this is just a red herring. We've got to --

18 MS. BASSIL: He was kicked off a year later.

19 MR. AUERHAHN: Your Honor, like I said, there are two
01:52 20 different kinds of posts here. One is a discussion about --
21 like, for example, this one, this is from Brother Mujahid about
22 the attacks on Khobar.

23 MR. CARNEY: He was kicked out a year later, your
24 Honor. He was kicked out a year later.

25 THE COURT: I think it's a little too collateral, I

1 think, to be helpful to the jury. You can redirect him on the
2 moderation point, but I don't think we need all of those.

3 MR. AUERHAHN: Your Honor, what about the -- his
4 statements about the Khobar attacks are halal, which means
5 appropriate and acceptable. That's been --

6 THE COURT: I think you can get into what he regards
7 as moderate versus extreme and -- I don't know whether he'll
8 say that he thinks that's a moderate expression or not.

9 MR. CARNEY: This is from January of 2007. He was
01:53 10 kicked out in 2008.

11 MS. BASSIL: August 2007.

12 MR. CARNEY: August 2007.

13 THE COURT: Generally, the kicking out is a minor
14 point, certainly with respect to the witness, but even, which
15 is the real point, the defendant. It's just not central to the
16 issues we have here on either side.

17 MR. AUERHAHN: I agree. But, obviously, the term
18 "moderation" doesn't affect whether or not at the relevant time
19 period you're a member of the conspiracy. However, it is
01:53 20 creating a false impression in the jury's minds.

21 THE COURT: You can address with the witness the range
22 of expressions that he would classify as moderate, which might
23 surprise the jury or might not.

24 MR. CARNEY: And these were things considered to be
25 moderate by the people running Tibyan. That's the essential

1 part.

2 (Discussion held off the record.)

3 MR. CARNEY: I couldn't hear what you said.

4 THE COURT: Some of the exhibits that you used, 1144
5 and 45, you never offered. I don't know whether you meant to
6 or not.

7 MR. CARNEY: I'd offer them now.

8 THE COURT: You do?

9 MR. CARNEY: I actually wrote a note to myself because
01:54 10 -- with the idea that --

11 THE COURT: Are you going to offer any of the ones
12 that you used?

13 MR. CARNEY: Just the four that I used.

14 THE CLERK: 43, 44, 45 --

15 MR. CARNEY: And 46.

16 . . . END OF SIDEBAR CONFERENCE.)

17 (Exhibit Nos. 1143-1146 received into evidence.)

18 Q. Now, sir, do you recall being accused of being sarcastic
19 and rude on Tibyan?

01:55 20 A. I don't recall, sir, no.

21 MR. AUERHAHN: May I approach, your Honor?

22 THE COURT: You may.

23 MR. AUERHAHN: This is Page 14 of 1136.

24 A. (Reading.)

25 Q. Does that refresh your recollection as to whether or not

1 you were called -- accused of sarcasm, rudeness, and
2 unnecessary comments which have provoked fitnah?

3 A. I don't recall that, sir, no.

4 MR. AUERHAHN: May I approach again, your Honor? Page
5 20 of the same exhibit.

6 Q. How about Abu Sabaayaa, the defendant, being accused of
7 sarcasm and harshness towards brothers and sisters?

8 A. I have no recollection of that, sir.

9 Q. Could you read that to yourself and see if that refreshes
01:56 10 your recollection?

11 A. (Reading.)

12 Q. Does that refresh your recollection?

13 A. It does not, sir.

14 Q. Now, in addition to the Umar Hadeed video, did the
15 defendant also translate a Zarqawi Eid tape in its entirety?

16 A. I don't recall, sir.

17 MR. AUERHAHN: May I approach, your Honor?

18 THE COURT: All right.

19 MR. AUERHAHN: Page 15, same exhibit.

01:57 20 MR. CARNEY: I object to this path. I thought this
21 was what we focused on at the sidebar.

22 THE COURT: We focused on the admission -- no. I
23 think some questioning is okay, but -- go ahead.

24 A. Which?

25 Q. Right here, in the box.

1 A. (Reading.)

2 Q. Does that refresh your recollection about a translation of
3 a Zargawi Eid tape?

4 A. It does not, sir.

5 MR. AUERHAHN: Your Honor, we can discuss it later,
6 but I'd move to introduce at least this portion of Exhibit
7 1136, on Page 15.

8 THE COURT: All right. We'll discuss it at the break.

9 MR. AUERHAHN: If I can just have one moment, please,
01:58 10 your Honor?

11 Q. Now, sir, with reference to this so-called moderation, do
12 you recall the Khobar bombing -- Khobar Towers bombing in Saudi
13 Arabia?

14 A. Approximately what time, sir, what year?

15 Q. In the '90s?

16 A. Yes, sir.

17 Q. To put it into context, when did the United States invade
18 Afghanistan?

19 A. Late 2001, I believe.

01:59 20 Q. And Iraq?

21 A. March of 2003.

22 Q. And the Khobar bombing was when?

23 A. Like you said, in the mid '90s sometime, sir. I don't
24 remember the exact year.

25 Q. It took place where?

1 A. In Saudi Arabia, sir.

2 Q. Did the United States ever invade Saudi Arabia?

3 A. No, sir.

4 Q. But the Khobar bombing was -- what was the Khobar Towers?

5 MR. CARNEY: Your Honor, I object. This is getting so
6 far afield.

7 THE COURT: Yeah, I think it is. Sustained.

8 MR. AUERHAHN: Well, may we approach, your Honor?

9 THE COURT: All right.

02:00 10 (SIDEBAR CONFERENCE AS FOLLOWS:

11 MR. AUERHAHN: First of all, it's directly relevant on
12 two points. There was all this discussion about coming to the
13 aid of Muslims whose countries have been invaded. Khobar
14 Towers, which he says was an acceptable attack on American
15 servicemen, took place before Afghanistan, before Iraq, so goes
16 directly to rebut a lot of the arguments the defense made as
17 well as -- in cross-examining this particular witness.

18 Secondly, it goes directly to this issue of moderation
19 in whose mind. Certainly, supporting the Khobar attacks is not
02:00 20 moderation. Supporting the kidnapping and beheading of Paul
21 Johnson in Saudi Arabia is not moderation. And so it seems to
22 me it's not far afield. It's directly on point, both generally
23 as well as this witness' statements.

24 THE COURT: Well, I think what I had in mind is a
25 rather concise direction of the witness' attention to

1 particular views such as perhaps the beheading and his
2 assessment that that would qualify as moderate. We don't need
3 all the details of everything that happened. This is a Rule
4 403 issue in terms of efficiency and not wasting the jury's
5 time. You can get to the crux of the moderation, if he thinks
6 that the beheading of Paul Johnson was a moderate -- supporting
7 that was a moderate view. But we don't need all the
8 circumstances.

9 MR. AUERHAHN: Okay.

02:01 10 THE COURT: Just be efficient.

11 MR. AUERHAHN: Okay.

12 . . . END OF SIDEBAR CONFERENCE.)

13 MR. AUERHAHN: I'll try to get directly to the point,
14 your Honor.

15 Q. So the attack on the Khobar Towers, which was a residence
16 of American servicemen in Saudi Arabia in the mid '90s, did you
17 believe that was an appropriate action against U.S. servicemen?

18 A. At what time, sir?

19 Q. In 2006, 2007, 2005.

02:02 20 A. I would say so, sir, yes.

21 Q. And the defendant, did he agree with you?

22 A. I would say so, yes, sir.

23 Q. And with reference -- do you know who Paul Johnson was?

24 A. Excuse me?

25 Q. Do you know who Paul Johnson was?

1 A. Was he someone who was at some point kidnapped and
2 executed?

3 Q. In Saudi Arabia?

4 A. I don't recall where it was, sir.

5 Q. Would it refresh your recollection: He was a civilian
6 contractor who worked on helicopters, kidnapped in 2004?

7 A. I recall the name linking with kidnapping, but I don't
8 recall which country it happened in, sir.

9 Q. What happened to Mr. Johnson?

02:03 10 A. I believe he was killed by his captors, sir.

11 Q. Beheaded?

12 A. I don't recall how he was killed, sir.

13 Q. Did you agree with that as an action against U.S.
14 interests in Saudi Arabia?

15 A. At that time?

16 Q. Yes.

17 A. Yes, sir.

18 Q. And did the defendant as well?

19 A. I don't recollect, sir.

02:03 20 MR. AUERHAHN: May I approach, your Honor?

21 THE COURT: Go ahead.

22 MR. AUERHAHN: Actually, I believe this is in
23 evidence. So perhaps we can just bring it up on the screen,
24 Exhibit 420.

25 Q. Now, sir, this appears to be quoting a post by Abu

1 Sabaayaa; that's the defendant, correct?

2 A. Yes, sir.

3 Q. And it says, "In contrast" --

4 MR. CARNEY: I object. I would ask that the rule of
5 verbal completeness apply because it's a two-paragraph --

6 THE COURT: I think you should have both paragraphs.

7 MR. AUERHAHN: Okay.

8 Q. "Now, similarly, any American or other Westerner who was
9 in the Peninsula doing any type of work that is not

02:04 10 contributing to the war effort against the Muslims, such as
11 maintainers of oil fields, civil engineers, etc, then I also do
12 not agree with targeting them and killing them simply because
13 they are Americans. I support their expulsion but not their
14 killing.

15 "In contrast, a man such as Paul Johnson, who was helping
16 in the maintenance and repair of American Apache helicopters,
17 that is, to anyone who has sight with which they can see or a
18 brain with which they can think, a totally different story."

19 Does that refresh your recollection as to whether or not
02:04 20 the defendant supported the kidnapping and beheading of Paul
21 Johnson?

22 A. No, sir, it does not.

23 Q. Okay. But this is the Paul Johnson who was a maintenance
24 and repairman on Apache helicopters that you were referring to?

25 A. Presumably, yes, sir.

1 Q. And he was not even a U.S. servicemen; he was a civilian
2 contractor?

3 MR. CARNEY: I object, your Honor.

4 THE COURT: Sustained.

5 Q. Was he a man in uniform, a military man?

6 A. I don't believe so, sir.

7 Q. Okay. With reference to men in uniform, American military
8 men, was there any doubt in your mind that attacking them and
9 killing them was acceptable?

02:05 10 MR. CARNEY: I object, your Honor. We've gone over
11 this and over this and over this.

12 THE COURT: I think we've strayed from the point that
13 we've been discussing. Sustained.

14 MR. AUERHAHN: May I have one moment, your Honor?

15 Q. Now, Mr. Carney asked you about -- or asked you to read a
16 segment about bearing false witness. Do you remember the post
17 you read at the end of your cross-examination about bearing
18 false witness?

19 A. Can you put it up again, sir?

02:06 20 Q. Here it is in hard copy.

21 A. Yes, sir.

22 Q. Okay. When you testified that Mr. Abousamra went to
23 Pakistan for military training, were you bearing false witness?

24 A. Against who?

25 Q. When you said Mr. Abousamra went to Pakistan for military

1 training, were you bearing false witness?

2 MR. CARNEY: I object.

3 THE COURT: I've lost the context. Let me see you at
4 the side.

5 (SIDEBAR CONFERENCE AS FOLLOWS:

6 MR. AUERHAHN: Can I just have one moment, please?

7 MS. BASSIL: Your Honor -- no, no. It's not for this.
8 Miss Patel has to leave once we go on the break. She's going
9 to Texas for Thanksgiving so she won't be back. I just wanted
02:07 10 to let you know that.

11 THE COURT: Happy Thanksgiving.

12 MS. PATEL: Thank you. You too.

13 MR. CARNEY: My objection is, in essence, the
14 prosecutor is asking the witness, Were you telling the truth
15 when you testified. To my knowledge, that's not permitted to,
16 now on redirect, say, Well, were you telling the truth about
17 this? Were you telling the truth about that? Were you telling
18 the truth? He's commenting on his own credibility.

19 THE COURT: Well, witnesses sometimes get asked that.

02:08 20 But I think the question was a little argumentative. Maybe you
21 can get -- anyway.

22 MR. AUERHAHN: I'll withdraw the question. I'm done.

23 THE COURT: Okay. Do you have any?

24 MR. CARNEY: No. I'm done, too.

25 . . . END OF SIDEBAR CONFERENCE.)

1 MR. AUERHAHN: Your Honor, I'm not going to have any
2 further questions. Thank you.

3 MR. CARNEY: Your Honor, I have no --

4 THE COURT: No recross, okay.

5 MR. CARNEY: No recross.

6 THE COURT: Thank you. Mr. Spaulding, thank you.

7 MR. CARNEY: In case I said I did.

8 THE COURT: Mr. Spaulding, thank you. Your testimony
9 is finished. We'll take the morning recess at this point.

02:08 10 (Recess taken at 11:03 a.m.)

11 (After recess:)

12 THE CLERK: All rise.

13 (The Court enters the courtroom at 11:34 a.m.)

14 THE CLERK: Please be seated.

15 THE COURT: Okay.

16 MS. BASSIL: Your Honor, I had a couple of specific
17 objections. The next witness, as I understand it, is a reader,
18 all right? And specifically, I have two specific objections
19 and then two sort of more general objections.

02:39 20 My specific objections are, first, to Exhibit 503,
21 which is an instant chat -- an instant message. A chat.

22 THE COURT: Can we pull that up?

23 MS. BASSIL: And it would be the second page. And it
24 would be, I guess, halfway down. Right. Okay.

25 What I'm objecting to, your Honor, is what they're

1 discussing in this is sort of -- let me see. I think they're
2 basically discussing various forums, and so forth, and Tibyan.
3 And what Abu Mundhir says, if you see it down towards the
4 beginning, "Me and Khubayb were talking about how we just need
5 armed wing now, hehe." And then the Arabic is the defendant.
6 And, per usual, he just changes the subject and doesn't respond
7 to that. And I feel that it is basically unfair to allow them
8 to read that section. It is as though -- and I'm sure they're
9 going to want to use it to say, "Oh, they're looking for an
02:41 10 armed wing."

11 The defendant doesn't respond to that. And it's said
12 in a joking manner, and I think it's pulled out of context to
13 allow that to come in. So that's my objection to that specific
14 portion of that chat. And it would be basically those four
15 lines.

16 THE COURT: Okay.

17 MR. AUERHAHN: Your Honor, to put it in context,
18 they're talking about being popular, their translation
19 services. And the defendant says, "Yup, maybe one day there
02:41 20 will be a Tibyan brigade." And as you'll recall from the GUH
21 video -- and I think Mr. Spaulding made some comment about a
22 Shukri brigade, and referring back to the GUH video, I mean,
23 that's what these groups of suicide bombers called themselves,
24 "brigades."

25 So it seems to me that what Mr. Mundhir says is not,

1 you know, deviating from what the defendant says. He, as a
2 coconspirator, is adding another point to what they're talking
3 about. So, I mean, it's clearly a coconspirator statement in
4 context. If they want to argue to the jury, as they've done
5 with other cases in the past, that there should be a different
6 spin put on it, they're obviously free to do that. But it is a
7 coconspirator statement, it is a response to what the defendant
8 is saying and it is relevant and the jury can decide whether or
9 not it's probative of anything at all.

02:42 10 MS. BASSIL: As you can see, your Honor, when the
11 defendant says Mr. Mundhir answers "laugh out loud," this is
12 all in the context of joking and casual chats. And to turn
13 that into, "Oh, they're planning an armed brigade," is really
14 pulling this out of context in an unfair way, and I think it is
15 more prejudicial than it is probative.

16 MR. AUERHAHN: And the defendant then goes on to say,
17 "The Slicing Sword to Defend the Messenger," so it's in
18 context --

19 MS. BASSIL: That is the title of that lecture that he
02:42 20 refers to, your Honor. He refers to the link Islamway, and it
21 says "lesson"; that's the title.

22 THE COURT: Well, I don't know how significant it is,
23 but I think it can be used. The objection is overruled.

24 MS. BASSIL: The next objection I specifically have,
25 your Honor, is 523, and it would be one, two -- third page,

1 please, Paul.

2 And it would be the bottom half of the third page.

3 Right there.

4 Your Honor, this is Mr. Abu Mundhir -- they're talking
5 about "39 Ways." He said, "I showed one brother the cover. He
6 loved it," which I think has been established that it was not
7 the defendant who did the cover. There's been a lot of chats
8 that it was Ibn Umar who did the cover and the graphics. And
9 he said, "One brother, he loved it. He said it reminded him of
02:43 10 like Anarchist Cookbook or Mein Kampf, laugh out loud."

11 And I think that is so inflammatory. You know, while
12 the jury -- some people may or may not know about "Anarchist
13 Cookbook," certainly the reference to "Mein Kampf" is just so
14 inflammatory and has no bearing in this trial. And it's not
15 even our client agreeing with him. And it's not even
16 Mr. Mundhir; it's somebody told Mr. Mundhir who told somebody
17 who he's now reporting it.

18 And I think it's far more prejudicial than probative.
19 It has no probative value whatsoever except to be pulled out of
02:44 20 context by the government.

21 MR. AUERHAHN: Well, your Honor, again, we're not
22 pulling anything out of context. In fact, chats that begin and
23 end but within a very short period of time where it's clearly
24 the same conversation where we're continuing the conversation.
25 If you look up above, just above that, the defendant says, in

1 talking about the final production of "39 Ways," "I hope this
2 book makes an impact."

3 So that's Mundhir then responding to what the
4 defendant said, "I hope it had an impact," to like things -- to
5 books and publications like "Anarchist Cookbook" and "Mein
6 Kampf"; that is, books that have had impact, particularly "Mein
7 Kampf," books that have had impact.

8 So again, it would be cutting -- they've been arguing
9 about the rule of completeness. It would be cutting the
02:45 10 conversation in half to take out that response by Mu'ndhir.
11 After they're cut off, they come back on, Mu'ndhir says, "You
12 there?" He says, "Yes," and then the conversation continues.

13 MS. BASSIL: Your Honor, that's exactly
14 what -- Mr. Auerhahn just pulled it out of context. He said in
15 this, "Somebody told me the cover reminds me of this," not the
16 content, the cover. And here he is pulling it out of context
17 saying, "Oh, it's a book that has impact like 'Mein Kampf.'"

18 Your Honor, please, I think this is so inflammatory.
19 Nobody wants to hear that and it has absolutely nothing to do
02:45 20 with this.

21 THE COURT: I think it has little probative value and
22 that can go out.

23 MS. BASSIL: Thank you.

24 Your Honor, my more general objections are this:
25 There are -- in this person's readings, I counted 15 times he's

1 going to refer to -- read things about "39 Ways." And it's
2 just a question of economy. And it's messages like "39 Ways
3 almost done"; "Not done yet"; "Hope to finish it." I mean, I
4 really don't know what we need 15 instant messages about the
5 same thing. I don't think there's ever been any dispute that
6 the defendant wrote it. And -- oh, translated it. Sorry.
7 There's not been any dispute that he translated it.

8 And also, there appears to be, I believe -- I think
9 there's five more chats, I believe, about encryption. Or I'm
02:46 10 sorry, I think there's three more chats about encryption, we
11 already had five chats about encryption. I'm not sure why we
12 have to have even yet more. And I also counted one, two,
13 three, four, five exhibits that have already been previously
14 shown to the jury.

15 So I think we're getting to the point where -- I don't
16 know. Maybe I should just let them bore the jury. They hate
17 it. But in the interest of getting this case to the jury, I
18 think we can stop repeating things. And I would ask the Court
19 to exercise some discretion here and limit some of this.

02:47 20 MR. AUERHAHN: Your Honor, with reference to the "39
21 Ways," we're playing mostly short segments from a number of
22 these. There's a back-and-forth between the defendant and
23 Abu Mu'ndhir. At one point the defendant says, "You know, I'm
24 a little concerned about some of these next ones. They're kind
25 of touchy. I don't want to be connected to it." And he says,

1 "Well, don't worry. What we'll do is you'll create a PDF, send
2 it to this Ibn Umar who's in the United Kingdom and then your
3 connection directly to it will be severed." I mean, that's
4 some of the conversations that go on.

5 One of the other chats that's in here about 39 is
6 where he sends it in its dot-doc form before it's finalized to
7 someone who asks for it. So, again, it's relevant. It's
8 another person he's --

9 THE COURT: Okay. Well, I don't think I'm in a
02:48 10 position to make the editing selection. I have some sympathy
11 with the concern raised about redundancy, and I presume to
12 speak on behalf of the jury when I say that. So I just ask you
13 to be cognizant of that. Other than that, go ahead and --

14 MS. BASSIL: That's all I have.

15 THE COURT: -- do what you have.

16 Let me just ask, with respect to -- we talked about a
17 possible hearing with the witness.

18 MR. CHAKRAVARTY: I've been informed by Denner
19 Pellegrino that they will have a representative here at one
02:48 20 o'clock --

21 THE COURT: All right.

22 MR. CHAKRAVARTY: -- on the motion to quash.

23 THE COURT: So let's get the jury.

24 (Pause.)

25 THE CLERK: All rise for the jury.

1 (The jury enters the courtroom at 11:45 a.m.)

2 THE CLERK: Please be seated.

3 MR. AUERHAHN: The United States calls Daniel Genck.

4 DANIEL GENCK, duly sworn

5 THE CLERK: Have a seat, please.

6 State your name and spell your last name for the
7 record.

8 THE WITNESS: My name is Daniel Genck. Last name is
9 spelled G-E-N-C-K.

02:50 10 THE CLERK: Thank you.

11 DIRECT EXAMINATION

12 BY MR. AUERHAHN:

13 Q. Sir, how are you employed?

14 A. I'm employed by the Federal Bureau of Investigation as a
15 special agent.

16 Q. And how long have you been so employed?

17 A. A little over two and a half years.

18 Q. And on what squad are you?

19 A. I'm on the Joint Terrorism Task Force.

02:51 20 Q. What did you do prior to becoming an FBI agent?

21 A. I was a high school principal and football and lacrosse
22 coach.

23 Q. Okay. And what's your educational background?

24 A. I have a bachelor's degree from St. John's University in
25 Minnesota and a master's degree from Marist College in

1 Poughkeepsie, New York.

2 MR. AUERHAHN: If we could pull up Exhibit 253,
3 please.

4 THE COURT: These will all have been admitted, right?

5 MR. AUERHAHN: Yes.

6 BY MR. AUERHAHN:

7 Q. Now, sir, does this appear to be an email from
8 Tarek Mehanna to almuwahhid@hotmail.com on April 7, 2005?

9 A. Yes, it is.

02:52 10 Q. Okay. And was there an attachment to this email?

11 A. Yes, there was.

12 MR. AUERHAHN: Can I have page 2, please.

13 Q. And is it a document entitled "The Ruling Regarding
14 Killing One's Self to Protect Information" based on the essays
15 of the Honorable Shaykhs 'Abdul-'Azeez al-Jarboo' and Dr. Ayman
16 al-Thawaahiree, the second volume of the Martyrdom Series?

17 A. Yes, it is.

18 MR. AUERHAHN: Could you pull up Exhibit 414, please.

19 Q. Now, does this appear to be a message from Aboo Khubayb
02:52 20 al-Muwahhid --

21 A. Yes, it does.

22 Q. -- to -- I think I cut it off -- to Abu Sabaayaa?

23 A. Yes, it is.

24 Q. And the recipient of the previous email was someone named
25 al-Muwahhid?

1 A. Correct.

2 Q. And does Mr. Muwahhid say, "I have noticed on this forum
3 many of your beneficial translations which you have done. I
4 asked the other brothers at Tibyan Publications and we wanted
5 to ask if you would be willing to join our Da'wah efforts and
6 help us translate books. We are currently working on some
7 projects"?

8 MS. BASSIL: Excuse me, your Honor. Why doesn't
9 Mr. Auerhahn just read it straight through and sit in the chair
02:53 10 there? Could we have a question?

11 BY MR. AUERHAHN:

12 Q. Was I reading it correctly?

13 A. Yes, sir.

14 Q. Thank you. Is one of the projects that he's asked to work
15 on "Ruling Regarding Killing One's Self to Protect Information"
16 which is based on the works of Shaykh 'Abdul-'Azeez al-Jarboo
17 and Dr. Ayman?

18 A. Yes.

19 Q. And that's the attachment to Exhibit 253?

02:53 20 A. Yes, it was.

21 MR. AUERHAHN: Can we go back to Exhibit 253, please,
22 page 3.

23 Q. And could you read that first paragraph, please?

24 A. Yes. "It is permissible for a Muslim to kill himself if
25 he is captured and he fears that he will reveal the secrets of

1 the Muslims (mujahideen in particular) due to his weakness and
2 lack of stability during torture given the fact that revealing
3 this information might cause disasters for the Muslims
4 (mujahideen in particular)."

5 Q. And attached to that answer there's a footnote, correct?
6 Could you read the footnote, please?

7 A. Sure. "Some of the quotes in this translation are taken
8 from the book by Shaykh Yoosuf al-'Uyayree entitled 'The
9 Islamic Ruling on the Permissibility of Martyrdom Operations.'"

02:54 10 MR. AUERHAHN: Okay. Could we go to page 9, please.

11 Q. Would you read that paragraph, please.

12 A. Sure. "It is known also that the Muslim is forbidden from
13 immersing himself in places where he will be destroyed and
14 killed, but if this is done for the path of Allah, for the
15 benefit of the Din, and to raise the Tawheed of Allah, then
16 this becomes something which is legal, nay, even preferred, and
17 very much beloved as in the Hadeeth of Aboo Hurayrah."

18 MR. AUERHAHN: Can we bring up Exhibit 68, which was a
19 photograph found on the defendant's computer.

02:55 20 Q. It may be hard to read. I don't know if you can read
21 that.

22 A. Yes. It says, "The Ruling Regarding Killing One's Self to
23 Preserve Information" -- excuse me -- "to Protect Information."

24 Q. By at-Tibyan Publications?

25 A. Yes; that's correct.

1 MR. AUERHAHN: Exhibit 251, please.

2 Q. And does this appear to be an email from the defendant to
3 the same individual, Abu Khubayb al-Muwahhid?

4 A. Yes, it is.

5 Q. May 14, 2005?

6 A. Correct.

7 Q. And the defendant says, "It's all yours"?

8 A. Correct.

9 MR. AUERHAHN: Can we go to the next page, please?

02:56 10 Q. And does this appear to be a lecture given by Shaykh
11 Abdullah Azzam?

12 A. Yes, it does.

13 Q. Could you read that paragraph, please.

14 A. "So the lines of history are not written except with
15 blood, and glory does not build its high peak except upon
16 skulls, and honor and high status cannot be established except
17 upon a foundation of limbs and corpses."

18 MR. AUERHAHN: Next page, please?

19 Q. And this paragraph as well, please?

02:56 20 A. "Verily, those who assume that they are able to change a
21 reality or to transform a society without blood and sacrifices
22 and loss of limbs, and without the loss of innocent lives, then
23 these people do not understand the reality of this religion and
24 they do not know the methodology of the leader of the
25 messengers."

1 MR. AUERHAHN: Can we go to Exhibit 252, please.

2 Q. And does this appear to be an email to the same
3 individual, Abu Khubayb al-Muwahhid, June 2, 2005, with an
4 attachment called "Tawheed of Action.doc"?

5 A. Yes, it does.

6 MR. AUERHAHN: Can we go to the next page?

7 Q. Does this read "The Tawhid of Action - Segment of a Speech
8 given by the martyred Shaykh of the Mujahideen, Imam Abdullah
9 Azzam"?

02:57 10 A. Yes, it does.

11 Q. Would you read that last paragraph, please?

12 A. "While living in Afghanistan, I have realized that Tawhid
13 cannot penetrate into the soul of the human being, nor will it
14 intensify and strengthen the way it does in the fields of
15 jihad."

16 MR. AUERHAHN: Next page, please?

17 Q. Read that paragraph, please?

18 A. "So: The settling of Tawhid in this world is done by the
19 sword...not by reading books, not by studying the books of
02:57 20 Aqidah."

21 Q. Does it say that "This Tawhid cannot be learned by study
22 lessons. No, it can only be brought up and raised (through
23 Tarbiyyah) in the souls, through confrontations in battles, and
24 the events which take place from the stances taken in the face
25 of the Tawaghit...through the sacrifices which the soul of the

1 human puts forth"?

2 A. Yes; that's correct.

3 Q. And could you read that paragraph, please?

4 A. "And it is appropriate to mention in this discussion that
5 some of those people who do not understand the reality and
6 nature of this Tawhid - they accuse these people (i.e., the
7 Afghans) whom Allah has honored the Muslims through them,
8 through whom Allah has elevated the significance of every
9 Muslim in the world, through whom Islam is being lifted from a
02:58 10 bottomless pit and placed onto the international platform,
11 contesting against forces whom people call 'super powers' in
12 today's world. Those who have returned Haybah (inspiration of
13 fear) to Islam, which is absent due to the absence of jihad..."

14 MR. AUERHAHN: Next page, please?

15 Q. And does it say, "And this fear and dread which the
16 enemies should have of us can never return to us except by the
17 sword, by fighting and killing"?

18 A. Yes; that's correct.

19 Q. And so this was called the "Tawhid of Action"?

02:59 20 A. Yes.

21 MR. AUERHAHN: Can we bring up Exhibit 67, a
22 photograph found on the defendant's computer.

23 Q. Can you see what that is?

24 A. Yes.

25 Q. Is that a publication the "Tawhid of Action" by at-Tibyan

1 Publications?

2 A. Yes, it is.

3 MS. BASSIL: Objection, your Honor. It's a
4 photograph. That's all it is.

5 THE COURT: Okay. I think that's agreed, right?

6 MR. AUERHAHN: Yes.

7 BY MR. AUERHAHN:

8 Q. That says "Tawhid of Action," at the bottom, "at-Tibyan
9 Publications"?

02:59 10 A. Yes, that's what it says.

11 MR. AUERHAHN: Can we bring up Exhibit 250, please.

12 Q. And does this appear to be also an email from the
13 defendant to the same person with a document attached called
14 lilaaf eng.doc?

15 A. Yes; that's correct.

16 MR. AUERHAHN: And can we go to the next page, please?

17 Q. Does it appear to be an excerpt of a larger document?

18 A. Yes, it does appear to be.

19 MR. AUERHAHN: Okay. Exhibit 255, please.

03:00 20 Q. Does this appear to be an email on April 10, 2005, from
21 the defendant again to the same man, Abu Khubayb al-Muwahhid?

22 A. Yes, it is.

23 Q. And does the defendant say, "This is another article I
24 just translated for Tib-Pubs"?

25 A. Yes, he does.

1 MR. AUERHAHN: Next page, please?

2 Q. And is the attachment "The Word.doc"?

3 A. Yes, it is.

4 MR. AUERHAHN: Can we go to 255A, please?

5 Q. Is this entitled "The Importance of the Word"?

6 A. Yes, it is.

7 Q. Can you read that paragraph, please.

8 A. "And some others might say: What importance does the word
9 have while the wounds of the Ummah are pouring blood? And what
03:01 10 is the point of the word while the wounds of the Ummah are only
11 building up, and the enemy is only intending to do so for a
12 longer amount of time?"

13 Q. Does this state, "The prolonged efforts of the enemy
14 against the lands of Islam and their violation of the honor of
15 Islam are a reality that none can deny except one who is
16 heedless and ignorant or a low-lying deceptive agent (and the
17 first is not any less of a danger than the second). And
18 because of this, the word is necessary; the word that wakes the
19 heedless and teaches the ignorant; the word that embarrasses
03:01 20 the hypocrite and exposes the deceiving deceiver; the word that
21 stirs up the Ummah so that it surprises the internal enemy with
22 the same intensity as the external enemy; the word that
23 identifies the conflict and raises the banner and smashes
24 against the corners of the universe. And can this stir-up
25 occur except by the word? The exalted says, 'Therefore openly

1 proclaim what you have been commanded with and avoid the
2 ignorant'?"

3 A. Yes, that's what it says.

4 MR. AUERHAHN: Page 3, please.

5 Q. Can you read that paragraph, please?

6 A. "And because of the word, families were separated and the
7 servants of Allah were torn apart, and because of it the widows
8 cried and the children became orphaned. And because of the
9 word the swords of jihad were unleashed, so the sword of jihad
03:02 10 was legislated forever so that it is ongoing until the day of
11 resurrection. And for the sake of the word there are spears
12 and weapons, for the sake of subduing innovation and raising
13 the Sunnah. And for the sake of the word, blood is spilled,
14 and for the sake of it, the Angel descended from the heavens."

15 Q. And does it -- this last paragraph say, "And because of
16 the word, the battalions of suicide fighters will remain. And
17 because of it the word of disbelief will fall underneath the
18 feet of the mujahideen, as Allah has made the word of those who
19 disbelieve the lowest, and the word of Allah the highest until
03:03 20 the day of judgment, and this is the significance of the word"?

21 A. Yes, it does.

22 Q. Thank you.

23 MR. AUERHAHN: Can you bring up Exhibit 412, please.

24 Q. Now, does this appear to be a posting by Abu Sabaayaa just
25 a few days after the previous email --

1 A. Yes, it is.

2 Q. -- of the document we just read, "The Importance of the
3 Word"?

4 A. Yes; that's correct.

5 Q. And this is a posting where?

6 A. It's being posted on the at-Tibyan Publications website.

7 MR. AUERHAHN: Can you bring up Exhibit 248, please.

8 Q. Does this appear to be an email from the defendant,

9 Tarek Mehanna, to the same man, Abu Khubayb al-Muwahhid,

03:03 10 Thursday, April 1st, 2005, with an attachment, "Such are the
11 Messengers Tested"?

12 A. Yes; that's correct.

13 MR. AUERHAHN: Next page, please?

14 Q. And, again, this is "Such are the Messengers Tested and
15 the Outcome will be in their Favor" by the Shaykh, the
16 Commander Abu Mus'ab az-Zarqawi (May Allah preserve him and Aid
17 him with his Victory)"?

18 A. Yes; that's correct.

19 MR. AUERHAHN: Can you go to page 5, please.

03:04 20 Q. Does that state, "And Allah, the exalted, has legislated
21 jihad to complete this religion and has raised its status so
22 high that it took the place of the highest task in service of
23 the lord and made it to include hardships and tribulations that
24 are naturally hated and feared"?

25 A. Yes.

1 MR. AUERHAHN: Page 8, please?

2 Q. And Abu Mus'ab az-Zarqawi, could you remind us who he
3 is -- or was?

4 A. Abu Mus'ab az-Zarqawi was the leader of the al Qa'ida in
5 Iraq branch.

6 Q. "This is jihad...the pinnacle...and fruits. It comes
7 after a long period of patience and active dwelling in the land
8 of battle, waiting for the roar of the enemies and enduring
9 their evil; dwelling that lasts continuous months and years.

03:05 10 And if you do not experience these pains, then Allah will not
11 give you victory, because victory comes with patience."

12 A. Yes; that's correct.

13 MR. AUERHAHN: Can you go to page 19, please.

14 Q. Could you read that paragraph, please?

15 A. "Thirdly, Fallujah opened the battlefield by its
16 destruction, as it caught the attention of the sons of Islam
17 from both inside and outside Iraq, and it paid with much of the
18 pure blood of many of the sons of Islam that was spilled on its
19 land, in order to rise to the responsibility of jihad and to go
03:05 20 forth to resist the global crusader campaign. So the battles
21 flared up in various corners of the land of Iraq, and the
22 battalions and groups were formed, and the mujahideen stood up
23 and chased the enemy and hunted them wherever they were. And
24 we saw, by the favor of Allah, huge losses that were handed to
25 the enemy of all of the land of Iraq, so the golden points of

1 the victory is that the souls of the sons of the jihad became
2 strengthened while the most modern vehicles of warfare were
3 moving around in front of them, so they are now free from the
4 false notion of powerlessness and fear, and have now proceeded
5 to the plains of bravery and action."

6 Q. Does it then read, "Fourthly, the battle of Fallujah
7 secured an important strategic military victory. Everyone is
8 aware of the superiority of the American military equipment and
9 its army and military structure that depends on striking
03:06 10 targets from far away in order to avoid hand-to-hand combat,
11 and that protects the American soldier from being engaged in
12 intense fighting that would cost him his life. But Fallujah
13 surrounded these powerful vehicles according to cunning
14 planning and forced them into a merciless, chaotic street fight
15 that drained their energy and endurance and equipment. So the
16 American soldier came to face death and destruction from where
17 he never expected, and the Americans were forced to come down
18 into the" --

19 MR. AUERHAHN: Next page, please?

03:07 20 Q. -- "alleyways and streets and to enter homes and
21 buildings, and the enemy became exposed to the fire and bombs
22 of the mujahideen, and was surprised at their ability to stage
23 headily hit-and-run attacks. So they were forced to engage in
24 skirmishes that they had not planned for in which they suffered
25 great losses in life and equipment"?

1 Can you read the next paragraph, please?

2 A. "Fifthly, the American military leadership was forced to
3 experience the great self-defeat. It was clear from the start
4 to the initiators and planners of this war that the mujahideen
5 would not be discouraged or impeded by anything even if this
6 meant becoming engaged in a massive annihilating fight in which
7 they would all be killed. So the jihadi logic became the great
8 unbreakable code in the face of the Americans' plans for global
9 war, and what happened in Fallujah of pride and firmness shook
03:07 10 the souls of the leadership of the enemy, and they became
11 afflicted with anxiety and personal anguish and moral turmoil.
12 And what awaits them is more severe and bitter, by the help of
13 Allah, the exalted."

14 MR. AUERHAHN: Can we go to page 23, please.

15 Q. And could you read those three paragraphs, please.

16 A. "On the third day of the battle and after intense and
17 aggressive bombing of the sections of Fallujah, the mujahideen
18 woke up at night from their sleep, so they saw the American
19 vehicles and tanks in the streets and alleyways. So the
03:08 20 leaders of Islam in the midst of this turmoil stood up under
21 the command of the brother Abu Azzam and Umar Hadid and Abu
22 Nasir al-Libi and Abul-Harith Muhammad Jasim al'Isawi, and
23 other than them from the heros, and expelled the invaders to
24 the outskirts of Fallujah, and the weapons that they used in
25 the battle were the PK and the Kalashnikov.

1 "And the Americans suffered great and massive killing on
2 their part to the point that many of them ran away from the
3 battle and hid in some of the houses of the Muslims. And the
4 mujahideen were first reluctant to attack these homes out of
5 fear that they would harm the Muslims, but when they made
6 certain that there were American troops present, they entered
7 and found them in hiding, so they killed them as they would
8 kill fleas and insects, and from Allah is the favor and grace.

9 "And after a few days of battle one of the commanders
03:09 10 suggested to the brother Umar Hadid and the brother Abul-Harith
11 Jasim al-'Isawi, that they shave their beards and leave
12 Fallujah after a safe way is found for them to save themselves
13 and continue with their work from outside the city. So the
14 heros refused this and said, 'By Allah, we will not leave as
15 long as single muhajir [sic] remains firm in this city.' And
16 they fought until they were martyred, may Allah the exalted
17 have mercy on them and accept them from his martyred servants."

18 MR. AUERHAHN: Can you bring up Exhibit 612, page 7,
19 please.

03:09 20 Q. Does this appear to be a chat between Mr. Aboubakr and the
21 defendant?

22 A. Yes, it is.

23 Q. I'll read Mr. Aboubakr. "Yo, who was Umar Hadeed
24 exactly?"

25 A. "He was the commander of the mujahideen in Fallujah. He

1 was killed last Ramadhaan when the Americans invaded it."

2 Q. "Oh, okay."

3 A. "Abu Musaab told him to shave his beard and escape, but he
4 refused and stayed until he was killed."

5 Q. "Glory be to Allah. How come they don't show him?"

6 A. "They did."

7 Q. "When, dude?"

8 A. "Did you see the part. 2940: In the background, that's
9 him."

03:10 10 Q. "Oh, that's him? Okay. I saw that. God bless. He's
11 young."

12 A. "Yeah. It is reported that he said, 'I will never leave
13 Fallujah as long as there is one single foreign mujahid who has
14 come here to help us.'"

15 MR. AUERHAHN: Exhibit 249, please?

16 Q. Does this appear to be an email from the defendant to the
17 same man, Abu Khubayb al-Muwahhid, April 22, 2005, with
18 attachments zar1.jpg and "Subject: pics to go along with the
19 video"?

03:10 20 A. Yes, it is.

21 Q. And does the defendant say, "I thought it would be a good
22 idea to have either of these two pictures of the brother as the
23 display image for the Ibtillaa' video to be playing with the
24 audio"?

25 A. Yes; that's correct.

1 MR. AUERHAHN: And could you bring up 249A, please.

2 Q. Are these the attached photos to this particular email?

3 A. Yes, they are.

4 Q. And who are they photos of?

5 A. Both photos are of Abu Musaab Al Zarqawi.

6 MR. AUERHAHN: Exhibit 577, please.

7 Q. Does this appear to be a chat between the defendant and
8 someone named Ahmad AS, Ahmad Abousamra?

9 A. Yes, it is.

03:11 10 Q. Does Ahmad say, "Yeah. So can you give Abu Hudhayfah and
11 Abu Sulayman Messenger accounts"?

12 A. Yes, he does.

13 Q. "I had them before but I had deleted them. Also, Edgar,
14 Hamzah Pettelier, Ahmad Alfarsi, et cetera."

15 Would you read the defendant's part?

16 A. Yes. "Abu Sulayman: Calvarnson3@hotmail.com; Abu
17 Hudhayfah: Abuhuthayfah@hotmail.com; Edgar:
18 Edgareduardo@hotmail.com; Pelletier: Don't have; Farsi:
19 Doesn't have MSN."

03:12 20 Q. "Any of the other Tibyan brothers that has a Messenger
21 account?"

22 A. "Well, Khubayb, but he's MIA."

23 Q. "I thought he wasn't here anymore. Yeah, that's all
24 right."

25 A. "Yeah."

1 Q. Okay. And the emails that we've been talking about were
2 from the defendant to a individual named Khubayb?

3 A. Yes; that's correct.

4 Q. And the defendant says "Khubayb, he's MIA." What do you
5 understand "MIA" to mean?

6 A. Missing in action.

7 MR. AUERHAHN: Exhibit 513, please.

8 Q. And does this appear to be an email between -- I'm sorry,
9 a chat between the defendant and someone named Abu Mu'ndhir?

03:12 10 A. Yes, it is.

11 Q. Now, after exchanging some greetings, does Abu Mu'ndhir
12 say, "Dude, you hear from Aboo K?"

13 A. Yes, he does.

14 Q. Can you read the defendant's part?

15 A. "? No, why?"

16 Q. "I don't know. Haven't seen him in weeks."

17 A. "He told me that he would be going soon. So maybe he made
18 it."

19 Q. "Okay. Allah willing."

03:13 20 A. "Allah willing. I just hope he isn't translating books
21 while he is there."

22 Q. "LOL. Why?"

23 A. It would be funny in the middle of a battle he remembers
24 that he translated a word wrong" --

25 Q. "LOL."

1 A. -- "and just logs onto TP" --

2 Q. "Laugh out loud."

3 A. -- "from his laptop."

4 Q. "Laugh out loud."

5 MR. AUERHAHN: 528, please.

6 Q. And, again, does this appear to be a chat between Abu
7 Mu'ndhir and the defendant?

8 A. Yes, it does.

9 Q. Again, after exchanging some greetings does the defendant
03:13 10 say, "Brother," and send a link to a CNN article about a
11 Bangladesh arrest?

12 A. Yes, he does.

13 Q. Okay. Did you have an opportunity to look at that link
14 and see what it's about?

15 A. Yes, I did. It details the arrest of Ensahnal Sadeeqe.

16 Q. Ensahnal Sadeeqe?

17 A. Yes.

18 Q. Where?

19 A. I believe he was abroad.

03:14 20 MS. BASSIL: Objection, your Honor. Hearsay.

21 THE COURT: I'm sorry?

22 MS. BASSIL: It's hearsay.

23 MR. AUERHAHN: He's sending a link.

24 THE COURT: Well, I'm not sure it's hearsay. I think
25 it may be personal knowledge. Foundation. Sustained.

1 MR. AUERHAHN: I'm sorry, your Honor?

2 THE COURT: Personal knowledge. I don't know the
3 foundation for his knowledge.

4 MR. AUERHAHN: Okay.

5 BY MR. AUERHAHN:

6 Q. How did you determine where this -- what this link is to;
7 in other words, what's the article on the other side of the
8 link?

9 A. Are you saying how I got to the article?

03:14 10 Q. Right.

11 A. I cut and pasted it into an Internet Explorer and viewed
12 it myself.

13 Q. So the link is still accessible?

14 A. Yes, it is.

15 Q. And what is the article about that you found by going to
16 the link that was sent by the defendant?

17 MS. BASSIL: Objection.

18 THE COURT: Overruled.

19 THE WITNESS: The article's about the arrest of
03:14 20 Ensahnal Sadeeqe.

21 BY MR. AUERHAHN:

22 Q. In Bangladesh?

23 A. Yes; that's correct.

24 Q. Okay. Then if you could read Mr. Mu'ndhir's part after
25 the link.

1 A. He says, "I saw."

2 Q. "Is that...?"

3 A. "I think so."

4 Q. "..."

5 A. "Yeah."

6 Q. "That's his name?"

7 A. "I'm not sure but I think so."

8 Q. "....damn."

9 A. "Yeah. I had a feeling."

03:15 10 MR. AUERHAHN: Next page, please?

11 Q. "What the frig, man."

12 A. "Yeah."

13 Q. "He left in August, right?"

14 A. "I don't remember. Maybe."

15 MR. AUERHAHN: Exhibit 687, please.

16 Q. And does this appear to be a chat between the defendant
17 and Ibn Umar?

18 A. Yes, it is.

19 Q. Does Ibn Umar say, "Brother, just wanted to tell you in
03:15 20 case you haven't heard it yesterday that most probably our
21 brother, Abu Khubayb, has been abducted and sent back to the
22 U.S. a few days ago"?

23 A. Yes; that's correct.

24 Q. And if you could read the defendant's part?

25 A. Sure. "Yeah. Unfortunately, I figured that the moment I

1 saw the news on CNN. Allah is the greatest."

2 Q. "We seek Allah's help."

3 A. "Allah is the helper of those who have no helper, and I
4 envy him."

5 Q. "Yes."

6 A. "And he has confirmed for himself that he is upon truth,
7 Allah willing."

8 Q. "Yes. Praise be to Allah."

9 A. "When a tape was made by Abu M called 'Such are the
03:16 10 Messengers are Tested,' it wasn't made for no reason."

11 Q. "Yes. May Allah help our brother, amen."

12 A. "Amen, lord."

13 Q. "I've posted the news in the shoora section."

14 A. "Dude, do you have any info on exactly what prompted his
15 arrest?"

16 Q. "Not really. I asked this brother who informed me to give
17 me more details," and then another link is sent.

18 MR. AUERHAHN: Can we go to the next page, please?

19 Q. If you could read the defendant's part?

03:16 20 A. "He is Ehsan?"

21 Q. And was that Mr. Sadeeqe's first name?

22 A. Yes.

23 Q. "I guess so. Don't know his real name. By the way,
24 brother, Dotmaa hasn't been online for almost a week and I'm
25 worried about him too. He has never been so long away."

1 A. "Hmm. PM him. Have you had any trouble?"

2 Q. "Nothing so far, praise be to Allah. How about you,
3 brother?"

4 A. "Well, yes. I've had the honor of being visited twice.
5 Second time there was a request to search my laptop."

6 Q. "Feds?"

7 A. "The one and only."

8 Q. "Hmm. And?"

9 A. "I told them to screw off. I got a lawyer and they never
03:17 10 came back."

11 Q. "Why did they come to you in the first place?"

12 A. "No clue. Maybe because I'm so handsome."

13 Q. "Laugh out loud. I hope so."

14 A. "Yeah, I think that was it. In any case, we got nothing
15 to hide."

16 Q. "I totally agree."

17 A. "Like bro Sas Jamal was admining CG, for God's sake."

18 Q. "Good. Allah willing. Brother, it's time for sunset
19 prayer. See you later, Allah willing. And inform members of
03:17 20 the shoora if you see them, Allah willing."

21 A. "Allah willing. Don't be down. Remember the story of
22 Fir'awan and Moses and how that turned out."

23 MR. AUERHAHN: Next page, please?

24 Q. "I know, brother. I just feel a little bit sad. I really
25 loved and still love akhi Abu Khubayb. May Allah protect you."

1 A. "Of course, man. But Allah willing, it will turn out to
2 be nothing. I just hope he keeps his emotions in check."

3 Q. "I really hope so, Allah willing. Take care, brother."

4 A. "You too."

5 MR. AUERHAHN: Exhibit 539, please.

6 Q. Does this appear to be a chat between the defendant and
7 someone, screen name, Abu Saqr?

8 A. Yes, it is.

9 Q. Okay. And after greetings, if you could read what the
03:18 10 defendant says, starting with "bro"?

11 A. "Bro, I was thinking to translate this," and then a link
12 is shared.

13 Q. "Yes. That's great."

14 A. "You don't think it will in any way push people away from
15 the mujahideen?"

16 Q. "No, it should be a reminder. This is kind of what we
17 were discussing the other day."

18 A. "Right."

19 Q. "But if you can, try to add whatever Takhreej possible for
03:18 20 the Hadith. I don't know how much is available, but it is
21 always better."

22 A. "Which Hadith?"

23 MR. AUERHAHN: Next page, please?

24 Q. If you could read the defendant's part?

25 A. "Any one specific?"

1 Q. "Whatever you can find."

2 A. "Okay. Should we make it an official release or just
3 another thread?"

4 Q. "How many pages is it again?"

5 A. "Five. Not too long. We can do both."

6 Q. "So it would be about ten in English."

7 MR. AUERHAHN: Exhibit 515, please.

8 Q. Does this appear to be a chat between the defendant and
9 someone named Abu Mu'ndhir?

03:19 10 A. Yes.

11 Q. Does Abu Mu'ndhir start off by saying, "Do you have time
12 to edit a document? It's translated and everything."

13 MR. AUERHAHN: Next page, please?

14 A. Yes, that's correct.

15 Q. The defendant responds, "Sure," and Mu'ndhir says, "Okay."
16 And then there's a YouSendIt link sent?

17 A. Yes; that's correct.

18 Q. Okay. Can we read at the bottom here? If you could read
19 the defendant where he starts, "Making some grammar corrects"?

03:20 20 A. "Making some grammar corrects as well."

21 Q. "K."

22 A. Then a link is shared: YouSendIt.com.

23 Q. "Let me see."

24 A. "Not too many corrects."

25 Q. "K. This should help the bros over there."

1 A. "God willing. May Allah reward you for translating it."

2 Q. "Not me. It was a brother. May Allah reward him."

3 A. "Amen."

4 MR. AUERHAHN: Exhibit 504, please.

5 Q. And down at the bottom here, does this appear to be a chat
6 session again between Mr. Mu'ndhir and the defendant on
7 February 6, 2006?

8 A. Yes, it is.

9 MR. AUERHAHN: If he could go to the next page,
03:20 10 please?

11 Q. And does the defendant say, "Dude, any working links to
12 'Nineteen Martyrs'?"

13 A. Yes, he does.

14 Q. Could you read what Mr. Mu'ndhir says?

15 A. "No, I think archive took it down."

16 Q. "I have the CD. Any quick way to get it online?"

17 A. "Just ask El Swede to upload it for you or upload it
18 yourself on" -- and a link is sent: Savedspace.com.

19 MR. AUERHAHN: Okay. Exhibit 718, please.

03:21 20 Q. Does this appear to be a chat between the defendant and
21 someone named Taimur on April 10th, 2006?

22 A. Yes; that's correct.

23 MR. AUERHAHN: Could you go to page 12, please.

24 Q. Okay. I'll read the defendant's part and if you could
25 read Taimur. "This article's about the Taliban's creed and how

1 they are not Sufis as many claim."

2 A. "Oh, nice. Yeah, I was reading about that."

3 Q. "It's by" --

4 A. "Like they're hardcore."

5 Q. -- "Yusuf al-Uyayri."

6 A. "Hanaifs and stuff."

7 Q. "The author of Constants."

8 A. "I know, bro. What is clearguidance.com or whatever?"

03:22 9 Q. "It's an old discussion board that was a precursor to
10 Tibyan. It was the best board online hands down, but it got
11 shut down."

12 A. "Yeah, sucks."

13 Q. "I was on it."

14 A. "Because the lecture I'm listening to, it says 'Brought by
15 Clear Guidance.'"

16 Q. "The Thawabit one?"

17 A. "Yeah, with Abul Muthanna."

18 Q. "Yeah, Abul Muthanna was on it. He was the one" --

19 MR. AUERHAHN: Next page, please?

03:22 20 Q. -- "who started Tibyan before he left."

21 A. "Nice. How old is he?"

22 Q. "Like 28. Link me to the lecture."

23 A. "Thawabit?"

24 Q. "Yeah, Muthanna's one."

25 A. And Taimur shares a link to uponsunnah.com. "Hurry up."

1 They will expire soon. Narrated by Abu Huraira, Allah's
2 messenger who said, 'Whoever dies without participating in an
3 expedition nor having the intention to do so dies on a branch
4 of hypocrisy.'"

5 MR. AUERHAHN: Okay. Exhibit 719, please.

6 Q. And does this appear to be a chat between the defendant
7 and the same Taimur on April 17, 2006?

8 A. Yes, it is.

9 MR. AUERHAHN: Can you go to page 7, please.

03:23 10 Q. Taimur says, "I'm calling myself 'Abu Slicer' from now
11 on."

12 A. "Yeah, including when you are looking to marry. So what's
13 your name, Slicer? Abu Slicer?"

14 Q. "Indeed, Shaykh of Islam, Abu Slicer. He slices and dices
15 the best lamb you've ever seen. Bro, on the Tibyan forums
16 someone posted a video of shaykh feiz, giyc and doc. You saw
17 it. He also posted on uponsunnah. That's how I know."

18 A. "Ya."

19 Q. "Cool, eh? Are you on Reviving Islam forum?"

03:23 20 A. "Yeah, but I never post."

21 Q. "Yo. Can you add me? I registered but I need validation.
22 Is that like Tib" --

23 MR. AUERHAHN: Next page, please?

24 Q. -- "or not as good?"

25 A. "Hmm. I'm not an admin but I can ask him when I see him

1 online."

2 Q. "Who? On Tib or Reviving Islam?"

3 A. "Revi."

4 Q. "Oh, can I join Tib? That might be too dangerous."

5 A. "Sure. I am an admin on that if you want to join."

6 Q. "Yeah."

7 A. "Just give me email address and screen name you want" -- I
8 can't see the edge there. I'm sorry.

9 Q. I'm sorry.

03:24 10 A. "Just give me email address and screen name you want to
11 use."

12 Q. "Do you give your real email or like a different one?"

13 A. "Whichever one you want."

14 Q. "No. But I'm asking you, which one is preferred? I don't
15 want some psycho FBI agent hacking into my account."

16 A. "Well, up to you, shaykh. Hehe."

17 Q. "Okay. Hold up. I'm gonna make a new email. Okay.
18 Never mind. Screen name: Abu Slicer."

19 A. "Okay."

03:24 20 Q. And then a link to -- I won't read it, but it's at
21 gmail.com.

22 A. "Okay."

23 Q. "Wait. Hold up."

24 A. "Okay."

25 Q. And the link is sent to abuslicer@gmail.com.

1 A. "Oh, God."

2 Q. "Haha. Yeah."

3 A. "Okay. I'll contact the account supervisor, and as soon
4 as he replies, your account info will be provided, Allah
5 willing."

6 Q. "K. Cool."

7 MR. AUERHAHN: Next page.

8 Q. "May Allah reward you for it."

9 A. "You too. My screen name on it is Abu Sabaayaa."

03:25 10 Q. "Okay. Okay. Okay. You know, all these forums, Tib, Its
11 and Revi. They're all safe?"

12 A. "Well, as long as you say safe things, yes."

13 Q. "On some forums, it says you have to post at certain times
14 or you'll be kicked off. Is that the same thing here?"

15 A. "As long as you post more than zero times, you're all
16 set."

17 MR. AUERHAHN: Okay. Exhibit 294, please?

18 Q. First, does this appear to be an email from the defendant
19 to Ihab Rashad and Ahmad Rashad on June 12, 2006?

03:26 20 A. Yes, it is.

21 Q. And does the defendant tell his brothers, "I got your
22 account info today, so here it is:" Ahmad, a user name and
23 password, and then Ihab, a user name and password. "After you
24 sign in, activate your accounts here by just posting or request
25 to have your account activated," and there's a link to

1 at-Tawheed.com. "You have to activate your account within 24
2 hours or else they will be deleted."

3 Do you recognize that at-Tawheed?

4 A. Yes, I do.

5 Q. What's that for?

6 A. That's the website for at-Tibyan Publications.

7 MR. AUERHAHN: Okay. Exhibit 510, please.

8 Q. Okay. Does this appear to be an email between the
9 defendant and Abu Mu'ndhir?

03:27 10 A. It's a chat, yes.

11 Q. I'm sorry. You're right. It's a chat on March 5, 2006.

12 A. Yes.

13 Q. I'll read Mu'ndhir. "Dude. There?"

14 A. "Yes."

15 Q. "Ready to work on 'Lion of the Arraf'?"

16 A. "Allah willing. Dude, I was wondering about the 39."

17 Q. "Yeah?"

18 A. "Is there anyone else who can finish it? I'd rather not
19 continue because the next ones are kind of touchy and I'd

03:27 20 prefer not to do them or..."

21 Q. "There's no one, dude. You know that. Laugh out loud."

22 A. "If I can do 'em, someone else can post them?"

23 Q. "That can be arranged."

24 A. "Just as long as my name isn't associated with it."

25 Q. "Yeah, just finish it all and release it under a

1 franchise, AC PDF, and delete the thread."

2 A. "But, yeah. Is Asad transcribed?"

3 Q. "I think it can be arranged, Allah willing. You're right.
4 Tor right."

5 A. "Of course. Can't log on without it."

6 Q. "Good."

7 A. "I almost feel like a migrant. One day I'm in Austria,
8 the next, I'm in Kansas."

9 MR. AUERHAHN: Can we bring up Exhibit 416, please.

03:28 10 Q. And do you recognize this as a posting on the Tibyan
11 website?

12 A. Yes, I do.

13 Q. By whom?

14 A. Abu Sabaayaa.

15 Q. On June 3, 2005?

16 A. Yes.

17 Q. And does it say, "This thread will consist of chapters
18 from the forthcoming release from at-Tibyan Publications, '39
19 Ways to Serve and Participate in Jihad,' written by the
03:28 20 martyred Shaykh 'Isa al-'Awshin, who was one of the main
21 editors of Sawt al-Jihad magazine, enjoy"?

22 A. Yes, that's what it says.

23 MR. AUERHAHN: Can we go to Exhibit 514, please.

24 Q. Does this appear to be a chat between the defendant and
25 Abu Mu'ndhir again on March 16, 2006?

1 A. Yes, it is.

2 Q. And after exchanging greetings, the defendant says, "How
3 are you, bro?" Would you read Abu Mu'ndhir's response?

4 A. "Yes, praise be to Allah."

5 Q. "Praise be to Allah. Good."

6 A. "Brother, I got someone to do the transcript for 'Lion of
7 the Arraf.'"

8 Q. "Nice. Brother, I was also wondering if you wanted to do
9 another book soon."

03:29 10 A. "Yeah, I think we should do one by Azzam. Remember, I
11 told you about being strong in prison, et cetera."

12 Q. "I was thinking about something about creed, about excuse
13 of ignorance."

14 A. "Hmm, dude, that could lead to friction because there's
15 differences between some of the young men and Abu H."

16 Q. "Okay."

17 A. "And Abu S."

18 Q. "Forget it, then."

19 MR. AUERHAHN: Next page, please?

03:30 20 Q. "What about 39?"

21 A. "I need to finish 39."

22 Q. "K."

23 A. "But no more posts. I'll just go through till the end."

24 Q. "Yeah, don't."

25 A. "And you guys put it out as a PDF."

1 Q. "PDF it."

2 A. "I don't want to risk anything with the forums."

3 Q. "Yeah."

4 A. "Dude, you know the 'Lions of the Desert' vid in Ramadi?"

5 Q. "Yeah."

6 A. "You know the second song in it?"

7 Q. "I haven't seen it."

8 A. "Man."

9 Q. "Can't download that stuff right now."

03:30 10 A. "That vid?"

11 Q. "LOL."

12 A. "Oh, okay. You're a wounded soldier. Hehehe."

13 Q. "Man, you don't even know, laugh out loud, like" --

14 A. "No, I do know."

15 Q. -- "there's videos by the Cloud people and a new one from
16 the Arabian Peninsula. I can't see any of them. Even GUH
17 which I worked on. I can't watch it and I want to see it. I
18 never get tired of seeing it. Laugh out loud."

19 MR. AUERHAHN: Next page, please? I'm sorry. Exhibit
03:30 20 517.

21 Q. And does this appear to be a chat again between
22 Mr. Mu'ndhir and the defendant on March 29, 2006?

23 A. Yes, it is.

24 Q. And does Abu Mu'ndhir say, "Dude"?

25 A. "Yes. 39. Should be done within the next two to three

1 days, Allah willing."

2 MR. AUERHAHN: Next page, please?

3 Q. "Nice. Allah willing."

4 A. "I'm on Number 30. Have like ten pages left."

5 Q. "Cool."

6 MR. AUERHAHN: Exhibit 518, please.

7 Q. Does this appear to be a chat between the same two men on
8 March 29th of 2006?

9 A. Yes, it is.

03:31 10 Q. Okay. Again, I'll read Mr. Mu'ndhir. "Sorry, was not at
11 home."

12 A. "Peace be upon you."

13 Q. "Peace be upon you."

14 A. "Is there someone who will edit 39 or what? Who's it
15 going to go through?"

16 Q. "I could find someone to edit if it's grammatical things,
17 like English-wise."

18 A. "No, I meant" --

19 Q. "Not Arabic to English."

03:32 20 A. -- "like to format it better for the PDF."

21 Q. "Oh, PM IY -- I mean, IU."

22 A. "?"

23 Q. "Ibn U."

24 A. "Ibn Umar?"

25 Q. "Yeah."

1 A. Okay.

2 MR. AUERHAHN: Next page, please?

3 A. "He does all that stuff."

4 Q. "Yeah."

5 MR. AUERHAHN: Exhibit 519, please.

6 Q. Does this appear again to be a chat between the same two
7 men on April 2, 2006?

8 A. Yes, it is.

9 MR. AUERHAHN: Would you go to the next page, please?

03:32 10 Q. Does the defendant say, "Done with 39. But Ibn U is never
11 online, man, heh."

12 A. "No, send him on his PM on there."

13 Q. "Maashi."

14 A. "He doesn't come on MSN. You have to go through there to
15 contact him basically."

16 Q. "Gotcha."

17 MR. AUERHAHN: Exhibit 559, please.

18 Q. And does this appear to be a chat between the defendant
19 and Ahmad Rashad on April 4, 2006?

03:33 20 A. Yes, it is.

21 MR. AUERHAHN: Page 2, please.

22 Q. Okay. Does Mr. Rashad say, "Hey, send me the 39 when you
23 are done. I wanna read it"?

24 A. "One sec."

25 Q. "Do you remember?"

1 A. "Homework."

2 Q. "And what happened?"

3 A. Then it says, "Ahmad Rashad has received 39ways.doc."

4 "Still going to add a cover, make it look nice, and put it in a
5 PDF. This is just your exclusive copy."

6 MR. AUERHAHN: Can you bring up Exhibit 20, which is a
7 document that was found on the defendant's computer, a dot-doc
8 file.

9 Q. And is this a document file entitled "39 Ways to Serve and
03:33 10 Participate in Jihad"?

11 A. Yes, it is.

12 Q. And is this similar to the PDF version that you've seen?

13 A. Yes, it is.

14 Q. But incomplete?

15 A. Right.

16 MR. AUERHAHN: Can we go back to Exhibit 559, please,
17 and page 3.

18 Q. Okay. If you could read the defendant's part, please?

19 A. "So don't send it to anyone."

03:34 20 Q. "Ooo, mi cool now."

21 A. Smiley face.

22 Q. "Do you know have to make graphic covers?" [sic]

23 A. "No, Tibyan, they do."

24 Q. "Oh, so you going to ask them to make it for you?"

25 A. "Well, this is for them. They are going to release it."

1 Q. "Yeah. I wish I could learn how to do that graph stuff.
2 I wish we could live at a time where JH is like something you
3 could talk openly about and live, go whenever you want. Like
4 the old days."

5 A. "Hehe. Keep dreaming, dear."

6 Q. Frown. "Man, I'm telling you, man, martyrs of today, I
7 think they are a lot higher level than the time of the
8 Khelafa."

9 A. "Yeah, def."

03:34 10 Q. "Because back then it was like summer vaca."

11 A. "Hehe. Yeah, brother. Be right back. Nighttime
12 prayers."

13 Q. "They are like, 'I'm going to JH this summer.' Laugh out
14 loud. All right, bro. Don't forget to talk to the Tibyan guys
15 for me, okay? Peace be upon you."

16 A. "Okay, man."

17 MR. AUERHAHN: Exhibit 520, please.

18 Q. And does this appear to be back to a chat between
19 Mr. Mu'ndhir and the defendant, April 5, 2006?

03:35 20 A. Yes, it is.

21 Q. Okay. Mr. Mu'ndhir says, "Did you get in contact with IU?"

22 A. "Yeah. He's editing it, making it nice, et cetera."

23 Q. "Cool."

24 A. "This should be nice, Allah willing."

25 Q. "Did you give him cover ideas?"

1 A. "Hopefully, it will lead to some real action. No, I let
2 him take care of that."

3 Q. "May Allah permits." [sic]

4 MR. AUERHAHN: Next page, please?

5 A. "He's good at that."

6 Q. "Yeah."

7 MR. AUERHAHN: Exhibit 538, please.

8 Q. Does this appear to be a chat between Abu Saqr and the
9 defendant, April 9, 2006?

03:36 10 A. Yes, it is.

11 Q. After exchanging greetings does the defendant say,
12 "Brother, the 39 doc is done. Praise be to Allah. Do you need
13 to check anything in it before Ibn U puts it out"?

14 A. Yes, he does say that.

15 Q. Sorry?

16 A. That's correct.

17 Q. What does -- could you read Abu Saqr's part?

18 A. "No, just make sure you proofread it and the translation
19 before you release it."

03:36 20 Q. "Okay."

21 A. "Have you heard from him lately?"

22 Q. "He just PM'd me."

23 MR. AUERHAHN: And Exhibit 522, please.

24 Q. And does this, again, appear to be a chat session between
25 Abu Mu'ndhir and the defendant?

1 A. Yes, it is.

2 Q. April 9, 2006?

3 A. Correct.

4 Q. After exchanging greetings does the defendant say, "Dude,
5 39 is done and PDF'd. Do you need to check it before it's
6 released?"

7 A. "No, not really, laugh out loud."

8 Q. "Okay. So Ibn U has the green light?"

9 A. "Yeah."

03:37 10 Q. "Okay."

11 MR. AUERHAHN: Exhibit 523, please.

12 Q. And does this also appear to be a chat between the same
13 two men on April 9th?

14 A. Yes, it is.

15 Q. Does Abu Mu'ndhir, after exchanging greetings, say, "Dude,
16 I forgot to ask you last time, did he give you a cover?"

17 A. "Yup."

18 Q. "How was it?"

19 A. "Wanna see it?"

03:37 20 Q. "Hold on. I think it would be in the gallery. Sah."

21 A. "Yes."

22 Q. "Okay. I had an idea for it but let me see it."

23 MR. AUERHAHN: Next page, please?

24 Q. And then is a link sent?

25 A. Yes.

1 MR. AUERHAHN: Next page, please?

2 Q. Is this a continuation of the chat session? Abu Mu'ndhir
3 says, "Oh, it's really nice. God bless."

4 A. Winky face. "I hope the book makes an impact."

5 Q. "Allah willing, it does."

6 MR. AUERHAHN: And Exhibit 524, please.

7 Q. Does this appear to be a chat between the same two men on
8 April 10, 2006?

9 A. Yes, it is.

03:38 10 MR. AUERHAHN: Next page, please?

11 Q. "When are you going to release the 39?"

12 A. "It's all in Ibn U's court now. He's just making some
13 final corrections to the text."

14 Q. "K."

15 MR. AUERHAHN: And finally, Exhibit 720, please.

16 Q. Does this appear to be a chat between the defendant and
17 Taimur on April 18, 2006?

18 A. Yes, it is.

19 MR. AUERHAHN: Okay. Next page, please?

03:39 20 Q. Does the defendant say to Taimur, "The 39. I translated
21 that. I just finished it"?

22 A. Yes.

23 MR. AUERHAHN: Now, can we bring up Exhibit 25?

24 Q. Okay. And this is the PDF version of "39 Ways"?

25 A. Yes; that's correct.

1 Q. Okay.

2 MR. AUERHAHN: Can we go to page 5, please.

3 Q. Tell me if I'm reading this correctly. "Introduction:
4 All praise is for Allah who has obligated jihad upon his
5 servants and has promised them firm establishment on earth and
6 dominance over the people of disbelief. And may prayers and
7 peace be upon the best of his servants, the one who truly
8 struggled in the path of Allah until he achieved that which was
9 certain, death."

03:40 10 A. Yes, that's correct.

11 Q. And does it also say in here, "Therefore, the entire world
12 has announced its war on terrorism, or rather, on jihad, and
13 its opposition to it and its various forms from being utilized
14 by Muslims"?

15 A. Yes; that's correct.

16 Q. "And there's no doubt that jihad today is from the most
17 virtuous of means of gaining nearness to Allah. In fact, it is
18 an obligation that Allah has obligated upon us. And there is
19 nothing more obligatory upon the Muslims after having belief in
03:40 20 Allah than jihad and repelling the invader who has occupied the
21 lands of the Muslims."

22 A. Yes; that's correct.

23 Q. And finally on this page, Today -- excuse me. "Jihad
24 today is the Ummah's only choice, as the enemy today has
25 occupied the lands of the Muslims one by one."

1 A. Correct.

2 MR. AUERHAHN: Next page, please?

3 Q. Does it also state, "So the Muslims today are left with no
4 choice but that of jihad and the language of weaponry"?

5 A. Correct.

6 MS. BASSIL: Your Honor, could we have the next
7 paragraph read, which completes the thought?

8 MR. AUERHAHN: Your Honor, the entire document is an
9 exhibit.

03:41 10 THE COURT: Well, I can't tell whether it completes
11 it. Why don't you go ahead.

12 BY MR. AUERHAHN:

13 Q. "Tell me by your lord: an invading enemy who has occupied
14 lands, violated honor, made orphans out of children, and widows
15 out of women, has begun to strike at Islam in every valley.
16 After all of this, is there a doubt that the only way to come
17 to an understanding with this enemy is through the language of
18 force and revenge?"

19 Can you read that section, please?

03:41 20 A. "There is no solution except for the greatest jihad.
21 World peace no longer satisfies us. There is no peace for the
22 enemy. This is a legislation and belief in every Muslim heart.

23 "From this standpoint, and since jihad is the choice of
24 the Ummah and the necessary and ordained obligation, I decided,
25 after consulting one of the brothers, to write about some steps

1 that everyone can take to serve the jihad and its people, and
2 to energize the train of jihad that is moving quickly despite
3 the overwhelming arrogance of the transgressor. We have titled
4 this document '39 Ways to Serve and Participate in Jihad.'"

5 Q. And what follows, then, are specific 39 steps?

6 A. Yes; that's correct.

7 Q. Okay. So let's go to the next page, to the first one.

8 "Number one: Make your intention for jihad. Having the
9 inner intention to fight, the true inner intention which leads
03:42 10 to one seeking to answer the call of jihad whenever the caller
11 calls."

12 A. Yes; that's correct.

13 Q. And does it also say, "So, this is from the perfection of
14 having the true intention to fight, and the grief and regret
15 that the person feels out of what he missed of fighting in the
16 path of Allah"?

17 A. Correct.

18 Q. Does it also say, "Whoever dies without having fought in
19 the path of Allah, or does not have the intention to fight,
03:43 20 then he dies upon a branch of hypocrisy"?

21 A. Correct.

22 MR. AUERHAHN: Could you go to page 9, please?

23 Q. And can you tell us what the second step is?

24 A. "Truthfully ask Allah for martyrdom."

25 MR. AUERHAHN: Next page, please?

1 Q. Does it say, "As for ten years passing by of the jihad in
2 Afghanistan, while the way to get there is safe and certain and
3 the borders are open, but he does not make it to Peshawar? As
4 for him, then, we ask Allah to forgive him if he thinks that he
5 is truthful in seeking martyrdom"?

6 A. Yes; that's correct.

7 MR. AUERHAHN: Could we go to page 3 -- I'm sorry --
8 the next page, please?

9 Q. Is this the third step?

03:44 10 A. Yes, it is. It says, "Go for jihad yourself."

11 Q. And does it say, "And when the word 'jihad' is mentioned,
12 it refers to qital, as Ibn Rushd said: 'And when the word
13 "jihad" is mentioned it means physically fighting the
14 disbelievers with the sword until they submit or give the
15 Jizyah by their hands while they are in a state of
16 humiliation'"?

17 A. Yes; that's correct.

18 Q. And next to the word "qital" -- and when the word "jihad"
19 is mentioned it refers to "qital" -- is there a footnote?

03:44 20 A. Yes, Number 7.

21 Q. And the footnote defines "qital" as fighting, correct?

22 A. Correct.

23 MR. AUERHAHN: Could you go ahead two pages, please?

24 Q. And is this Step No. 4?

25 MS. BASSIL: Objection, your Honor. It never said

1 "step." The document has referred to "39 Ways."

2 THE COURT: Rephrase it.

3 BY MR. AUERHAHN:

4 Q. Okay. Is this the fourth way?

5 A. Yes. It says, "Make jihad with your wealth."

6 MR. AUERHAHN: Okay. Next page, please?

7 Q. And is this the fifth way?

8 A. Yes. It says, "Help prepare the fighter who is going for
9 jihad."

03:45 10 Q. "Whoever prepares a fighter going out in the path of Allah
11 will have the same reward as him, the fighter, without the
12 reward of the fighter being decreased at all." Does it say
13 that?

14 A. Yes; correct.

15 MR. AUERHAHN: Can you go to the next page.

16 Q. The sixth way. And could you read the sixth way for us?

17 A. Number 6: "Take care of the family left behind by the
18 fighter."

19 Q. And could you then go to the next page for the seventh?

03:45 20 Would you read that, please?

21 A. Number 7: "Provide for the families of the martyrs."

22 MR. AUERHAHN: And the next page, Number 8, please?

23 A. Number 8: "Providing for the families of the injured and
24 imprisoned."

25 MR. AUERHAHN: And next page for Number 9.

1 Q. You can probably read that without me --

2 A. Yeah. Number 9: "Collect funds for the mujahideen."

3 MR. AUERHAHN: And go two pages ahead, please.

4 Q. And Number 10?

5 A. Number 10: "Pay Zakah to them."

6 MR. AUERHAHN: Two pages forward, please.

7 A. Number 11: "Cooperate in treating the wounded."

8 Number 12 as well?

9 Q. Yup.

03:46 10 A. "Praise the mujahideen and mention their accounts and call
11 the people to follow in their footsteps."

12 Q. "And from the methods of serving the jihad and the
13 mujahideen is to praise the mujahideen and to raise one's head
14 with them and to boast about their actions and mention their
15 stories and what occurs to them of miracles and victories
16 against the enemies of this Din." Is that what it says?

17 A. Correct.

18 Q. "And in mentioning their stories, there is a call for the
19 people to follow in their footsteps by which they walked upon
03:47 20 the methodology of the prophet Muhammad, peace be upon him.

21 And what is better than for you to make the examples of the
22 Ummah to be the mujahideen who give their lives?"

23 A. Correct.

24 MR. AUERHAHN: Next page, please?

25 Q. Does it say, "The Ummah should know that the history of

1 jihad and the mujahideen and the martyrs is not an individual
2 disconnected piece"?

3 A. Correct.

4 Q. Now --

5 MS. BASSIL: Can we have the rest of that paragraph,
6 please, your Honor?

7 THE COURT: Yes.

8 BY MR. AUERHAHN:

9 Q. "Rather, it is" --

03:47 10 MR. AUERHAHN: I was just waiting for a ruling, your
11 Honor. I'm sorry, your Honor.

12 THE COURT: I thought you were doing it without that.

13 MS. BASSIL: I thought I was supposed to read it.

14 BY MR. AUERHAHN:

15 Q. "Rather, it is a continuous series within the history of
16 this persistently noble Ummah that was started by Muhammad
17 (peace be upon him) and his Noble companions and those that
18 followed in their footsteps until today." And what's on Number
19 13?

03:48 20 A. Number 13: "Encourage the mujahideen and incite them to
21 continue."

22 Q. Does it say, "However, it is necessary to encourage the
23 mujahideen and to stand by them and back them up to show them
24 that we are with them against their enemies wherever they may
25 be. Likewise, we must encourage them to continue their jihad

1 and to be patient upon it despite what troubles and turmoils
2 they may face"?

3 A. Correct.

4 MR. AUERHAHN: Next page, please?

5 Q. Number 14?

6 A. Fourteen is: "Speak out for the mujahideen and defend
7 them."

8 MR. AUERHAHN: Next page, please? I'm sorry. Two
9 pages forward.

03:48 10 Q. What's the 15th way?

11 A. Number 15: "Expose the hypocrites and traitors."

12 Q. And 16, which would be two more pages forward?

13 A. Number 16: "Call and incite the people to jihad."

14 Q. And does it say, "And this is from the most important
15 message available to the one who cannot make jihad himself; it
16 is upon him to incite others due to the saying of Allah, the
17 exalted"?

18 A. Correct.

19 Q. Does it also say, "So it is an obligation upon the one who
03:49 20 is able to make jihad, the one who is unable to make jihad, and
21 every Muslim to incite his brothers to the fight the
22 disbelievers"?

23 A. Correct.

24 Q. What is the 17th way?

25 A. Seventeen: "Advise the Muslims and the mujahideen."

1 MR. AUERHAHN: Next page, please?

2 Q. Does it say, "So in this verse, there is a warning between
3 the believers and what the disbelievers are planning, and
4 advice to the mujahid in order to assist him in being hidden
5 from his enemy. And you should help in this as much as you are
6 able if this is needed of you"?

7 A. Correct.

8 Q. Now, what's Number 18?

9 A. Number 18: "Hide the secrets of the mujahideen that the
03:50 10 enemy can benefit from."

11 MR. AUERHAHN: Next page, please?

12 Q. Does it say, "The people of knowledge have said: 'It is
13 absolutely forbidden to betray these mujahideen, stand against
14 them, tarnish their image, assist anyone against them, blow
15 their cover, spread their picture on behalf of authorities, spy
16 on them, et cetera.' And whoever does this, then in reality,
17 he is assisting the Americans who are exerting all of their
18 efforts in arresting them and helping them reach their goals
19 that they have otherwise failed to reach. So be warned,
03:50 20 brother Muslim, of being an aider against the crusaders against
21 the mujahideen. And everyone who has done this in any way has
22 transgressed and oppressed and cooperated upon sin and
23 transgression, and Allah the exalted has said"?

24 A. Correct.

25 Q. What is Number 19?

1 A. Nineteen: "Supplicate for them."

2 Q. Twenty?

3 A. Twenty: "The supplication of distress."

4 MR. AUERHAHN: And two pages forward, please?

5 A. Number 21: "Follow and spread the news of the jihad."

6 MR. AUERHAHN: Next page, please?

7 A. Number 22: "Participate in spreading their releases of
8 books and publications."

9 Q. And does it say, "And this is related to the previous
03:51 10 method of spreading their news and distributing it between the
11 Muslims. So it is necessary for you to think of spreading
12 everything related to the jihad and that which incites and
13 calls to it in order to aid its people, and to make use of the
14 various methods of doing so; for example, collecting heroic
15 accounts involving sacrifice and bravery; Xerox-copying them
16 and distributing them amongst the people and on the internet;
17 also, collecting the letters of the prisoners in Guantanamo and
18 taking the best of them and spread them between the people so
19 that they may increase in their sympathy for them. Likewise,
03:51 20 everyone should try to prepare some media project regarding
21 mujahideen and their affairs. And here I will mention a
22 situation of one of the virtuous sisters who took it upon
23 herself to collect the latest news from Chechnya. She
24 collected the latest interviews with Shamil" --

25 MR. AUERHAHN: Next page, please?

1 Q. -- "Basayev and Khaltab, and she collected some poems and
2 stories and statements, then she put them all into a single
3 volume and distributed them between the people.

4 "And if you are incapable of releasing something yourself,
5 then it is upon you to spread anything related to the
6 mujahideen of publications, books, et cetera, in order to serve
7 the jihad and the mujahideen." Is that correct?

8 A. Yes; that's correct.

9 Q. And what's the next way?

03:52 10 A. Twenty-three: "Issue fatawa that aid them."

11 MR. AUERHAHN: Next page, please?

12 A. Number 24: "Stay connected with the scholars and
13 preachers and inform them of the situation of the mujahideen."

14 MR. AUERHAHN: Next page, please?

15 A. Twenty-five: "Become physically fit."

16 MR. AUERHAHN: And next page, please?

17 Q. And does it actually lay out a certain regimen for
18 physical fitness?

19 A. Yes, it does.

03:52 20 MR. AUERHAHN: Next page, please?

21 A. Number 26: "Train with weapons and learn how to shoot."

22 MR. AUERHAHN: And next page?

23 A. Number 27: "Learn to swim and ride horses."

24 MR. AUERHAHN: And next?

25 A. Number 28: "Learn first aid"; and Number 29: "Learn the

1 figh of jihad."

2 Q. And does this paragraph say, "And from the methods of
3 serving the jihad and the mujahideen is to learn the figh of
4 jihad and to study the rulings of it, and this will benefit the
5 mujahideen on the front lines, as the presence of those who
6 will teach them the affairs of their religion is something that
7 is greatly needed by those on the front lines. Likewise, this
8 person would be of benefit in speaking out in defense of the
9 jihad and the mujahideen from the attacks of the hypocrites,
03:53 10 and whoever does something upon knowledge is not like the one
11 who does something without knowledge"?

12 A. Yes; that's correct.

13 Q. "And included in learning the figh of jihad is reading
14 anything that could increase in one's knowledge of jihad and
15 its methodology, and would clarify any doubts that exist
16 surrounding it. And this can be established by reading the
17 books that were written by the people of knowledge in this
18 area, examples of which include books by Abdullah Azzam, Yusuf
19 al-Uyayri, Abu Muhammad al-Maqdisi, Abu Qatadah al-Filistini,
03:54 20 Abdil Qadir ibn Abdil Aziz, Sulayman al-Ulwan, Ali al-Khudayr,
21 Nasir al-Fahd, Abdil Aziz al-Jarbu, Abu Jandal al-Azdi, et
22 cetera"?

23 A. Yes; that's correct.

24 MR. AUERHAHN: Next page, please?

25 A. Number 30: "Giving shelter to the mujahideen and honoring

1 them."

2 Q. And 31?

3 A. "Having enmity towards the disbelievers and hate them."

4 MR. AUERHAHN: Next page, please?

5 A. Thirty-two: "Expend effort to free our captives."

6 MR. AUERHAHN: Next page, please?

7 A. Number 33, "Spread the news about the captives and be
8 concerned with their affairs."

9 MR. AUERHAHN: Next page?

03:54 10 A. Thirty-four: "Electronic jihad."

11 Q. Okay. And could you read this, please?

12 A. "And this terminology has emerged between those who seek
13 to assist the jihad on the internet, and this is a blessed
14 field which contains much benefit, such as following and
15 spreading of news between the people, in addition to a chance
16 to defend and stand up for the mujahideen and spread their
17 ideas and their requests to the people. This effort can be
18 divided into two major parts: Discussion boards and hacking
19 methods.

03:55 20 "As for the discussion boards, then a group of brothers
21 should get together and assign each other from the well-known
22 discussion boards to register in and post messages that fall
23 into the following categories: Inciting to jihad and
24 mentioning its virtues, especially in our times; defending the
25 mujahideen and protecting their honor from any who speak ill of

1 it; awakening the idea of jihad in the minds of the masses;
2 putting out researches and knowledge-based articles related to
3 jihad; going after those who oppose jihad from amongst the
4 modernists and apostates and exposing their faults.

5 "So the brothers should spread these messages throughout
6 each discussion board on a daily basis so that each subject is
7 posted, and then the other brothers can respond to the postings
8 on each board in order to keep it at the top of each forum."

9 Q. And is that last sentence, "Let us make jihad even if it
03:56 10 is by way of the internet"?

11 A. Yes, it is.

12 Q. And 35?

13 A. "Stand in opposition to the disbelievers."

14 MR. AUERHAHN: Next page, please?

15 A. Number 36: "Raise your children to love jihad and its
16 people."

17 MR. AUERHAHN: Next page, please?

18 A. Thirty-seven: "Abandon luxury."

19 MR. AUERHAHN: And next page, please? I'm sorry. Two
03:56 20 pages.

21 A. Number 38: "Boycott the goods of the enemy."

22 MR. AUERHAHN: Four pages forward, please?

23 A. Number 39: "Do not hire workers from the war wagers."

24 MR. AUERHAHN: And the next page.

25 Q. Does it say, "The scholars have always considered the

1 abandonment of jihad to be from the greatest of sins"?

2 A. Yes; that's correct.

3 MR. AUERHAHN: Two pages forward, please.

4 Q. Does it say, "Therefore, abandoning jihad in the path of
5 Allah is a reason for destruction in this world and the next"?

6 A. Yes, it does.

7 MR. AUERHAHN: Could you go forward three pages,
8 please? One more.

9 Q. And does it say, "And give us honor with jihad, and join
03:57 10 us with the caravan of martyrs and use us in your obedience and
11 pleasure"?

12 A. Yes, it does.

13 Q. Okay.

14 MR. AUERHAHN: Now, could we go to the next page,
15 please?

16 Q. At the end of the publication does it list at-Tibyan
17 releases?

18 A. Yes, it does.

19 Q. Okay. And the first one, "Such are messengers are
03:58 20 tested"?

21 A. Yes; that's the second one.

22 MR. AUERHAHN: Okay. Could you bring up -- that's
23 this one here. Could you bring up Exhibit 248, please?

24 Q. This is the email you read earlier?

25 A. Yes.

1 Q. "Such are the messengers" are attached to it?

2 A. Yes.

3 MR. AUERHAHN: Could we go back to the previous
4 exhibit, please?

5 Q. And the next is the "Expedition of Shaykh Umar Hadid,"
6 correct?

7 A. Correct.

8 Q. Okay.

9 MR. AUERHAHN: Next page, please?

03:58 10 Q. And "The Importance of the Word." Is that another
11 publication they advertise?

12 A. Yes.

13 MR. AUERHAHN: Would you bring up Exhibit 255, please?

14 Q. And was this the email to which "The Word" was attached?

15 A. Yes.

16 MR. AUERHAHN: Go to the second page.

17 A. Yes. Yes, it was.

18 Q. Okay.

19 MR. AUERHAHN: And if you could go back to "39 Ways"?

03:59 20 Go forward two pages, please?

21 Q. Is there a publication entitled "Ruling Regarding Killing
22 One's Self to Protect Information"?

23 A. Yes, there is.

24 MR. AUERHAHN: Could we go back to Exhibit 253,
25 please?

1 Q. And was this the email to which that was attached?

2 A. Yes, it is.

3 Q. Okay.

4 MR. AUERHAHN: Could we go back to the "39 Ways,"
5 please?

6 Q. And has one been called "The Ruling Regarding the Muslim
7 Prisoner"?

8 A. Yes.

9 MR. AUERHAHN: Could you bring up Exhibit 69, please,
04:00 10 which is, again, a photograph found on the defendant's
11 computer?

12 Q. And can you read what that is?

13 A. It says, "Issues pertaining to the rulings regarding the
14 Muslim prisoner."

15 MR. AUERHAHN: Okay. Now, can we bring up Exhibit
16 500, please?

17 Q. Now, does this appear to be a chat on February 4th between
18 the defendant and the same Abu Mu'ndhir?

19 A. Yes, it is.

04:00 20 Q. And after exchanging greetings does Mr. Mu'ndhir say, "How
21 are you"?

22 A. Yes, he does.

23 Q. Could you read what the defendant says?

24 A. "Sup." I'm sorry. "How are you, dude?"

25 Q. "Sup?"

1 A. "You got a working link to GUH English?"

2 Q. "I do. I do."

3 A. "Pass it on, man."

4 Q. "K."

5 A. "I got kids who want to see this."

6 Q. "Right. Right. I just showed the guard of the believers
7 and, likewise, to some," smiley face.

8 A. "Five star reviews?"

9 Q. And a link is sent. "Yeah, they loved it. Get them from
04:01 10 there. Plus, you can share it to Sufi," again, smiley face.

11 A. "Hehe. Yeah."

12 Q. Continue down to the --

13 A. Okay. "Who read Maqdisi's poem at the start?"

14 MR. AUERHAHN: Next page, please?

15 Q. "It's from a tape."

16 A. "Dude, where's the ten ops in a row?"

17 Q. "In the beginning after logo."

18 A. "Hell, yeah. There we go."

19 MR. AUERHAHN: 735, please.

04:01 20 Q. Does this appear to be a chat between someone known as
21 Umar Kalil and the defendant on February 7, 2006?

22 A. Yes, it is.

23 Q. Okay. Could you read the defendant's part, please?

24 A. "Kalil."

25 Q. "Peace be upon you."

1 A. "Peace be upon you. Check this out," and then a link is
2 shared. "Might take a while but well worth it. If it's too
3 big, then get the smaller version."

4 Q. Okay. Then Kalil signs off and back on again.

5 "Hey, send the smaller one again."

6 A. A link is shared. "Working?"

7 Q. "Yeah, but it stops every two minutes."

8 A. "Save it. Don't open it."

9 Q. "How do you save?"

04:02 10 A. "Go here," and then a link is shared, maniacmuslim.com,
11 "and go all the way down to the ad that says the 'Expedition of
12 Umar Hadeed.' At the end there are three links. Right click
13 on the second one."

14 Q. "It's going to take about 45 minutes."

15 A. "How long will the first link take?"

16 Q. "Three hours."

17 A. "Haha. Okay. Go for the second one. What about the
18 third one?"

19 Q. "What about the third one? About 15 minutes."

04:02 20 MR. AUERHAHN: Next page, please?

21 A. "Do that one. The screen is a bit smaller but still
22 visible. Works?"

23 Q. "Awesome. Papa like it. Peace be upon you."

24 MR. AUERHAHN: Exhibit 551, please.

25 Q. Does this appear to be a chat between Ahmad Rashad

1 February 7, 2006, and the defendant?

2 A. Yes.

3 Q. I'll read Ahmad Rashad's part. "So how did you do in the
4 exam, man? I'm watching Omar Hadeed video." And there's a
5 link sent. "This is from the day I was at his house."

6 A. "Did you download it?" Or excuse me. "Did you download
7 the translated version?"

8 Q. "MP. No, I left before it was done."

9 A. "There is a version that has been translated into English
04:03 10 with new stuff added onto it."

11 Q. "Do you have it? When I left it was not open yet" -- "it
12 was not out yet." I'm sorry.

13 A. Then a link is shared, maniacmuslim.com, and the second
14 says tinyurl.com. "Last link."

15 Q. "That's a big file."

16 A. "You want a smaller version?" and then another link is
17 shared to tinyurl.com.

18 Q. "Is it the same amount of stuff or less?"

19 A. "Same, just worse quality."

04:04 20 Q. "It's going to take some time to download. Big file."

21 A. "Hehe. Well."

22 Q. "I downloaded this one and blue, man. I have not seen any
23 good ones lately. Just small stuff here and there."

24 MR. AUERHAHN: Exhibit 505, please.

25 Q. Does this appear to be a chat between the defendant and

1 Abu Mu'ndhir on February 8th?

2 A. Yes, it is.

3 Q. The defendant says, "Another fan. GUH to English. Doing
4 great work."

5 MR. AUERHAHN: Next page, please?

6 A. "Laugh out loud. Where?"

7 Q. "A buddy of mine."

8 A. "Oh, okay."

9 MR. AUERHAHN: Exhibit 542, please.

04:04 10 Q. Does this appear to be a chat between the defendant and
11 someone named Ahmad as-Sarayri on February 5, 2006?

12 A. Yes, it is.

13 Q. Does Ahmad say, "What's new"?

14 A. "The cartoons are making a good job."

15 Q. "I have a big collection and I am distributing heavily."

16 MR. AUERHAHN: Next page, please?

17 Q. Continue?

18 A. "The most important one is the invasion of Shaykh Omar
19 Hadeed."

04:05 20 Q. "And participating in nice sites. Everyone here saw it.
21 Even women. You saw Badr?"

22 A. "Of course."

23 Q. "I have a nice collection, each of its own, about 700.
24 Could I send them?"

25 A. "700 CD?"

1 Q. "Yes. Tell me how to send them."

2 A. "CD empty?"

3 Q. "I have them stored with me."

4 A. "If Allah wills, I can bring them with me."

5 Q. "No, I have everything. Don't bring anything with you."

6 A. "Okay. I understand."

7 Q. "I have more than you can imagine."

8 A. Smiley face. "Our lord, praise be to you."

9 Q. "I am a participant at all private sites."

04:06 10 A. "Al-Hisbah?"

11 Q. "Yes."

12 THE COURT: Mr. Auerhahn, I think that we've reached
13 the closing point for today, so we'll pause now.

14 Jurors, let me just take this opportunity to thank you
15 again for your service in this case. We know what it means for
16 you to do that. As we break now for a little bit of rest and
17 relaxation, I hope you enjoy tomorrow and the few days
18 afterwards.

19 I caution you again against any discussion. There may
04:06 20 be some temptation at family gatherings to talk about matters;
21 I, please, urge you not to do that. Tell your family and
22 friends you'll see them at Christmas, and you can tell them
23 everything you want at that point, but for now you have to keep
24 your counsel, all right?

25 So have a very happy Thanksgiving, and I will see you

1 on Monday and continue with the rest of the case, all right?

2 Yes, we'll stay in the session with the lawyers.

3 THE CLERK: All rise for the jury.

4 (The jury exits the courtroom at 1:02 p.m.)

5 THE COURT: We're going to remain in session for a
6 motion to quash the subpoena.

7 MR. CHAKRAVARTY: Mr. Bailey is here, your Honor.

8 THE COURT: Good afternoon, Mr. Bailey. Thank you for
9 coming on short notice.

04:07 10 MR. BAILEY: Thank you, your Honor.

11 THE COURT: Go ahead.

12 MR. BAILEY: Yes, your Honor. If it please the Court,
13 Brad Bailey on behalf of Kareem Abuzahra.

14 I have previously filed a motion to quash a subpoena
15 that was served on Mr. Abuzahra on the 27th of October asking
16 him to comply by both appearing in court and by providing
17 certain documents on October the 24th.

18 What was requested includes, as I've indicated on page
19 2 of my motion, any and all records of payment to the United
04:08 20 States government regarding his purported cooperation; copies
21 of all tax returns filed by him with the federal government
22 from 2002 to the present; his passport; "all bank statements
23 from January 1, 2002, to the present, indicating any deposits
24 or expenditures of money by you or jointly with another on your
25 behalf; all financial statements filed by you for any reason

1 from January 1, 2002, to present; all leases signed by you from
2 January 1, 2002, to present; all cancelled checks written by
3 you or on your behalf from January 1, 2002, to present; all
4 statements of credit cards owned by you which you use from
5 January 1, 2002, to present; all contracts and agreements for
6 purchase, sale and lease of any automobiles from January 1,
7 2002, to present; all brokerage accounts and records of stock
8 accounts owned by you from January 1, 2002, to the present."

9 Your Honor, I've indicated that in my opinion this is
04:09 10 nothing more than harassment of a witness. This is about as
11 broad based a request or a fishing expedition as I've ever seen
12 as both a former federal prosecutor and now as a federal
13 defense attorney.

14 I've cited the *Bogosian* case about harassment, whether
15 there are other viable means, and really, whether the
16 information is relevant. As I've conceded, other than perhaps
17 payments to the government, which can be obtained through the
18 government themselves and should have been disclosed, I can't
19 see the relevance in any of this. And my client has a joint
04:10 20 account with his wife, he has small children. This is just
21 invasive, burdensome. And I really ask that it be quashed.

22 MS. BASSIL: Yes, your Honor.

23 THE COURT: Ms. Bassil?

24 MS. BASSIL: Your Honor, we served the subpoena. And
25 I'm not going to go into the issue because there were many

1 attempts to serve him and many attempts at avoiding service,
2 but let me say why we requested this information. And we
3 requested 2002 because the critical time around money was
4 around 2004, as you know, the trip to Yemen.

5 We requested this information because we feel that
6 under Rule 608 it concerns the truthfulness or untruthfulness
7 of Mr. Abuzahra. Throughout my reading of material in this
8 case, he seems to have an extraordinary amount of cash. He
9 apparently, according to the government's witnesses, gave
04:11 10 \$5,000 cash to Mr. Abousamra for Mr. Pippin; he paid for the
11 tickets of all three people, which I understand was \$6,180; I
12 believe he paid -- or they had cash. I'm a little -- the
13 reports kind of vary, but about around 10- to \$15,000 cash at
14 the airport; he gave either \$1,500 to \$2,500 cash to
15 Mr. Maldonado when he wanted to travel to Saudi Arabia; he
16 apparently gave Mr. Abousamra cash to go to Pakistan back in
17 2002. He reported a robbery in his home on October 21, 2009,
18 in which \$3,500 cash was missing.

19 It is my understanding he's a graduate student at
04:12 20 UMass. He's married with two children. I find the amount of
21 cash that seems to be floating around -- floating through this
22 man to be extraordinary. It's just an extraordinary amount of
23 money. And what I would say is we are looking for where this
24 cash is coming from.

25 We asked for his tax returns because, in fact, if

1 these are gifts, they should be reported as gifts and they
2 should be taxed. There's a great deal of cash that flows
3 through Mr. Abuzahra, and we intend to question him about the
4 sources of his cash and why he is so freely giving it away.
5 And so the only way to really get at cash is to ask for the
6 records that would theoretically -- that would provide you with
7 that information.

8 And so that's what we're looking for. For example,
9 asking for someone's lease indicates what their cost of living
04:13 10 is. So if his lease is \$5,000 a month and he earns 30,000 a
11 year, there's some question there that needs to be asked about.
12 And that is why we -- I have asked for these various requests.
13 And that's basically it. We feel that it goes to his
14 credibility and that it is a concern and that there is a
15 question as to his truthfulness or untruthfulness.

16 THE COURT: Does the government want to be heard on
17 this?

18 MR. CHAKRAVARTY: If we could briefly, your Honor. We
19 would join in the motion. We think this is not a case where
04:13 20 you have an expert witness or, as the defense has also filed a
21 motion to obtain records from the government, this is not like
22 those circumstances where there is some method to why a
23 financial record -- for example, payment to an expert
24 witness -- could be relevant. Obviously, we opposed the motion
25 before and your Honor has dealt with that.

1 But this witness, whose motive to testify has nothing
2 to do with financial incentive, obtaining his bank records or
3 finding out how much money he has says nothing about his
4 credibility with regards to the issues that he's going to be
5 testifying to in this case. And that seems to be the reason
6 why they're using this Rule 17 subpoena, to impeach the
7 witness, not to further the material fact of guilt or innocence
8 in this case.

9 I would just add just for your Honor's benefit,
04:14 10 whatever government record -- whatever the government had
11 obtained with regards to this witness's bank records have been
12 provided. A few of them have been marked as exhibits in this
13 case. The defense is well equipped to make the arguments that
14 Ms. Bassil just made without the need of this very invasive and
15 intrusive fishing expedition for records which nobody is even
16 lawfully required to keep for that long.

17 THE COURT: Would I be correct in presuming that the
18 government has disclosed any payments the government has made?

19 MS. BASSIL: Yes. There was some money for coffee and
04:14 20 doughnuts, I think.

21 MS. BASSIL: Your Honor, I'm sorry. I forgot one
22 piece I wanted to add, and I apologize. The other issue is
23 that if -- Mr. Abousamra seems to have a source of ready cash,
24 and a source of cash beyond what it appears he is earning. If
25 the source of that cash is illegal or it's not properly

1 reported to the authorities or to tax authorities, certainly
2 that would go to his hope to testify and sort of curry favor
3 with the government, for lack of a better phrase, and it would
4 go towards his bias.

5 MR. BAILEY: Your Honor, hypothetically it's possible
6 that my client has very wealthy parents, and to be able to
7 probe into that and look into that is highly invasive, as that
8 being the source of the income. I have not been invited to,
9 nor will I be standing in court, objecting to questions, nor
04:15 10 would that be my place. The defense certainly, in my humble
11 opinion, can probe on cross-examination. But to make him
12 produce this huge volume of records which he may not even have,
13 and frankly, not to have limited it to something like -- such
14 as the purported trip to Yemen or something, I just find this
15 way off base.

16 THE COURT: Well, okay. The motion is granted. The
17 subpoena is quashed. I think from Ms. Bassil's argument it
18 appears that this is, in fact, a discovery subpoena, not a
19 trial subpoena. I think it's not an appropriate use of Rule
04:16 20 17. And it is also, in the language of the rule, I think on
21 what's been shown, burdensome and oppressive. So I will grant
22 the motion and quash the subpoena.

23 MR. BAILEY: Thank you, your Honor.

24 THE COURT: While we're on the subject, why don't we
25 address -- there's a government's motion that is parallel.

1 MR. CHAKRAVARTY: So as I suggested earlier, your
2 Honor, the issue here is, again, the government views this as
3 an end run around discovery; particularly, Rule 16. They're
4 seeking records; in fact, while there's some suggestion that
5 what they're really looking for are any reports written by the
6 case agents in this case or any reports that might be in the
7 file which reflect interviews of government witnesses, the
8 actual motion is -- excuse me -- the subpoena is actually
9 broader than that. It says, again, anything in the case file.
04:17 10 Anything that would be responsive to that that is within our
11 Rule 16 obligations, or *Jencks* obligations, we have produced.

12 So it seems here that the defense is trying to get
13 through a subpoena, that which both they could not get on
14 direct -- through the discovery process, Rule 16; and then
15 somehow because now they are calling the witness, they are
16 allowed to obtain any prior kind of impeaching information,
17 what -- the floodgates that they would open by this kind of
18 procedure of simply listing as a defense witness every case
19 agent in every case, and then opening up the files of the FBI
04:17 20 which, in this case, include the classified information, seems
21 to be a far stretch from what Rule 17 was designed to do.

22 There is too much in a case -- in this case file for
23 any witness to be able to memorize. That does not mean that
24 you cart over, you know, Center Plaza to the federal courthouse
25 so that a witness can refresh their memory with regards to some

1 event that occurred, coupled with the fact that whatever is
2 responsive to a material statement of a government witness, you
3 know, something within the subject matter of their testimony,
4 all of the other criteria, that has already been produced.

5 So this seems like it's -- we don't have a problem
6 with witnesses being able to testify. Obviously, they have
7 been here every day and they will continue to be. The issue is
8 the document portion. It's just not narrow.

9 THE COURT: Ms. Bassil?

04:18 10 MS. BASSIL: Yes, your Honor. Your Honor, we have
11 sent a subpoena to Agent Williams and Daly. And, quite
12 frankly, both Mr. Carney and myself, and Ms. Patel, who was an
13 Assistant United States Attorney, have never heard of a case
14 where the case agents weren't called. So we do intend to call
15 them and we do intend -- and what we ask for is statements that
16 they have -- reports they have written or statements that they
17 have made reduced to writing.

18 I find it -- I find it extraordinary that between
19 *Jencks* obligations and exculpatory evidence -- theoretically,
04:19 20 there shouldn't be anything left. But apparently, there is a
21 wealth of things left, which leads me only to leave what is in
22 there as well. These are witnesses we're going to call. We're
23 entitled to the statements that they have made, the reports
24 that they have written.

25 THE COURT: Well, no. I agree with the government.

1 Again, you're entitled to what Rule 16 and the related local
2 rules and the *Jencks* act provide, but Rule 17 is not meant to
3 be a general deposition subpoena to find out something. If you
4 had something particular that you could show the relevance of
5 and the usefulness of, that might be something. But to say
6 that, We want to see what's there to see if there's anything
7 that could be used, I think that's just not -- I think the case
8 law is clear that Rule 17 is not intended to serve that
9 purpose.

04:20 10 So the government's motion is also granted and that
11 subpoena is quashed.

12 Now, there were a couple of witness subpoenas and --

13 MR. CHAKRAVARTY: I haven't been in touch with counsel
14 on those. It's not anticipated the government will call any of
15 those witnesses, so I don't know if --

16 THE COURT: I don't know whether those are live issues
17 with respect to McCloud and some other person.

18 MS. BASSIL: No. I think McCloud is not -- he's not
19 going to be a witness, and so anything related to him --

04:20 20 THE COURT: And there was a woman named Zachy (ph) or
21 something like that.

22 MS. BASSIL: That was his wife. That really is moot
23 at this point.

24 THE COURT: Those two are moot? Okay. All right.
25 Thank you. We'll be in recess. Happy Thanksgiving.

1 COUNSEL IN UNISON: Happy holiday.

2 LAW CLERK: All rise. Court will be adjourned.

3 (The Court exits the courtroom and the proceedings
4 adjourned at 1:16 p.m.)

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C E R T I F I C A T E

We, Marcia G. Patrisso, RMR, CRR, and Cheryl Dahlstrom, RMR, CRR, Official Reporters of the United States District Court, do hereby certify that the foregoing transcript constitutes, to the best of our skill and ability, a true and accurate transcription of our stenotype notes taken in the matter of Criminal Action No. 09-10017-GAO-1, United States of America v. Tarek Mehanna.

/s/ Marcia G. Patrisso
MARCIA G. PATRISSE, RMR, CRR
Official Court Reporter

/s/ Cheryl Dahlstrom
CHERYL DAHLSTROM, RMR, CRR
Official Court Reporter

Date: November 23, 2011